

Approved June 20, 1997.

Effective September 1, 1997.

CHAPTER 1171

S.B. No. 370

AN ACT

relating to the continuation and functions of the Texas Department of Transportation, the abolition of the Texas Turnpike Authority, and the creation of regional tollway authorities; authorizing the issuance of bonds and the imposition of taxes; granting the power of eminent domain; and providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. TEXAS TRANSPORTATION COMMISSION;
TEXAS DEPARTMENT OF TRANSPORTATION

SECTION 1.01. Section 201.204, Transportation Code, is amended to read as follows:

Sec. 201.204. **SUNSET PROVISION.** The Texas Department of Transportation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2009 [1997].

SECTION 1.02. Subsection (d), Section 201.051, Transportation Code, is amended to read as follows:

(d) Except as provided by Subsection (e), a person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;

(2) directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from the department; [or]

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(4) is registered, certified, or licensed by the department.

SECTION 1.03. Subsection (c), Section 201.057, Transportation Code, is amended to read as follows:

(c) If the director knows that a potential ground for removal exists, the director shall notify the commissioner of transportation of the ground, and the commissioner shall notify the governor and the attorney general that a potential ground for removal exists. *If the potential ground for removal relates to the commissioner of transportation, the director shall notify another member of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.*

SECTION 1.04. Subchapter B, Chapter 201, Transportation Code, is amended by adding Section 201.059 to read as follows:

Sec. 201.059. **TRAINING ON DEPARTMENT AND CERTAIN LAWS RELATING TO DEPARTMENT.** (a) *To be eligible to take office as a member of the commission, a person appointed to the commission must complete at least one course of a training program that complies with this section.*

(b) *The training program must provide information to the person regarding:*

(1) *this subchapter;*

(2) *the programs operated by the department;*

(3) *the role and functions of the department;*

- (4) *the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;*
 - (5) *the current budget for the department;*
 - (6) *the results of the most recent formal audit of the department;*
 - (7) *the requirements of the:*
 - (A) *open meetings law, Chapter 551, Government Code;*
 - (B) *open records law, Chapter 552, Government Code; and*
 - (C) *administrative procedure law, Chapter 2001, Government Code;*
 - (8) *the requirements of the conflict of interest laws and other laws relating to public officials; and*
 - (9) *any applicable ethics policies adopted by the commission or the Texas Ethics Commission.*
- (c) *A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the commission.*

SECTION 1.05. Section 201.102, Transportation Code, is amended to read as follows:

Sec. 201.102. **SEPARATION [DEFINITION] OF RESPONSIBILITIES.** The commission shall develop and implement policies that clearly *separate the policy-making [define the respective] responsibilities of the commission and the management responsibilities of the director and staff of the department.*

SECTION 1.06. Subsection (b), Section 201.107, Transportation Code, is amended to read as follows:

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The report must *comply with each reporting requirement applicable to financial reporting [be in the form and filed in the time] provided by the General Appropriations Act.*

SECTION 1.07. Section 201.203, Transportation Code, is amended to read as follows:

Sec. 201.203. **DEPARTMENT OFFICE[RECORDS].** The department shall have its *statewide headquarters office in Austin. [The department shall keep all of its records in that office.]*

SECTION 1.08. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.206 to read as follows:

Sec. 201.206. **DONATIONS AND CONTRIBUTIONS.** *For the purpose of carrying out its functions and duties, the department may accept, from any source, a donation or contribution in any form, including realty, personalty, money, materials, or services.*

SECTION 1.09. Subsections (a) and (b), Section 201.402, Transportation Code, are amended to read as follows:

(a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) *personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with Chapter 21, Labor Code;*
- (2) *a comprehensive analysis of the department work force that meets federal and state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations [guidelines];*
- (3) *procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state laws, rules, and regulations, and instructions directly adopted under those laws, rules, or regulations [guidelines] encourage a more equitable balance; and*

(4) reasonable methods to appropriately address the areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, *be reviewed by the Texas Commission on Human Rights for compliance with Subsection (a)(1)*, and be filed with the governor's office.

SECTION 1.10. Subsections (a) and (b), Section 201.404, Transportation Code, are amended to read as follows:

(a) The director or the director's designee shall develop an intra-agency career ladder program *that addresses opportunities for mobility and advancement for employees in the department* ~~covering all full-time classified and exempt positions~~. The program shall require intra-agency posting of all ~~nonentry~~ positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations *that are based on documented employee performance*. All merit pay for department employees must be based on the system established under this subsection.

SECTION 1.11. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.705 to read as follows:

Sec. 201.705. PILOT PROJECT ON VEHICLE MAINTENANCE OUTSOURCING. (a) The department shall conduct a two-year pilot project to determine whether contracting with a private entity for maintenance and repair services of all department vehicles would be cost-effective.

(b) The study must be implemented in at least three of the department's districts. The districts in which the study is implemented must vary in geography and population.

(c) Any cost savings that result from the project shall be deposited to the credit of the state infrastructure bank account created under Subchapter D, Chapter 222.

(d) Not later than January 1, 2001, the department shall submit a report to the legislature on the results of the pilot program and any recommendations on the continuation or expansion of the pilot program.

(e) This section expires January 1, 2001.

SECTION 1.12. Section 201.801, Transportation Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The department shall:

(1) keep an information file about each written complaint filed with the department that the department has the authority to resolve; and

(2) *provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the department's policies and procedures relating to complaint investigation and resolution.*

(e) *With regard to each complaint filed with the department, the department shall keep the following information:*

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the department takes no action on the complaint, an explanation of the reasons that no action was taken.

SECTION 1.13. Section 201.802, Transportation Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The director ~~(department)~~ shall prepare and maintain a written plan that describes the manner in which a person who does not speak English or who has a physical, mental, or developmental disability is provided reasonable access to the department's programs.

(c) *The department shall comply with each applicable law of the United States or this state that relates to program or facility accessibility.*

SECTION 1.14. Subchapter K, Chapter 201, Transportation Code, is amended by adding Section 201.905 to read as follows:

Sec. 201.905. MULTIMODAL ROAD USE. (a) The department shall conduct a comprehensive analysis of the multimodal use of roads and highways in the state highway system. The analysis shall include the collection of data on users' concerns about road conditions and actual and potential use patterns of roads or highways.

(b) After the analysis required by Subsection (a) is completed, the department shall initiate and coordinate a campaign to help increase public awareness of traffic safety issues.

(c) The department shall initiate a program of continuing community involvement sessions to help other state agencies, local decision-makers, interest groups, and the general public improve the state's comprehensive transportation system to include all modes of transportation.

SECTION 1.15. Chapter 201, Transportation Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. ELECTRONIC ISSUANCE OF LICENSES

Sec. 201.931. DEFINITIONS. In this subchapter:

(1) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(2) "License" includes:

(A) a permit issued by the department that authorizes the operation of a vehicle and its load or a combination of vehicles and load exceeding size or weight limitations;

(B) motor carrier registration issued under Article 6675c, Revised Statutes;

(C) a vehicle storage facility license issued under Article 6687-9a, Revised Statutes;

(D) a license or permit for outdoor advertising issued under Chapter 391 or 394;

(E) a salvage motor vehicle dealer and agent license issued under Article 6687-1a, Revised Statutes;

(F) specially designated or specialized license plates issued under Subchapters E and F, Chapter 502; and

(G) an apportioned registration issued according to the International Registration Plan under Section 502.054.

Sec. 201.932. APPLICATION FOR AND ISSUANCE OF LICENSE. (a) The commission may by rule provide for the filing of a license application and the issuance of a license by electronic means.

(b) The commission may limit applicant eligibility under Subsection (a) if the rules include reasonable eligibility criteria.

Sec. 201.933. DIGITAL SIGNATURE. (a) A license application received by the department is considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the license in accordance with Subsection (b).

(b) The department may only accept a digital signature used to authenticate a license application under procedures that:

(1) comply with any applicable rules of another state agency having jurisdiction over department use or acceptance of a digital signature; and

(2) provide for consideration of factors that may affect a digital signature's reliability, including whether a digital signature is:

(A) unique to the person using it;

(B) capable of independent verification;

(C) under the sole control of the person using it; and

(D) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

Sec. 201.934. PAYMENT OF FEES. The commission may adopt rules regarding the method of payment of a fee for a license issued under this subchapter. The rules may authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 1.16. Subchapter C, Chapter 202, Transportation Code, is amended by adding Section 202.060 to read as follows:

Sec. 202.060. LIVING LOGOS; PILOT PROJECT. (a) The commission may adopt rules implementing a pilot project for the leasing of state highway right-of-way, subject to any applicable federal regulation of outdoor advertising, as a location or locations for commercial advertising by means of a floral mosaic living logo.

(b) Rules adopted under this section shall:

- (1) provide for the award of a lease in a manner that maximizes revenue to the state;
- (2) regulate the content, composition, placement, installation, and maintenance of a floral mosaic living logo;
- (3) set a bond for faithful performance of the lessee;
- (4) provide for the public safety;
- (5) ensure that installation and maintenance of a floral mosaic living logo will not interfere with access to, or be inconsistent with the use of, abutting property; and
- (6) include such other matters as may be necessary to protect the integrity of the involved highway.

(c) A floral mosaic living logo installed or placed under this section may not contain a message, symbol, or trademark that resembles an official traffic-control device.

(d) This section applies to state highway right-of-way in a county with a population of 500,000 or more.

SECTION 1.17. Subchapter B, Chapter 222, Transportation Code, is amended by adding Section 222.034 to read as follows:

Sec. 222.034. DISTRIBUTION OF FEDERAL FUNDS. (a) Federal aid for transportation purposes that is administered by the commission shall be distributed to the various parts of the state for a funding cycle through the selection of highway projects in the state in a manner that is consistent with federal formulas that determine the amount of federal aid for transportation purposes received by the state. A distribution under this subsection does not include deductions made for the state infrastructure bank or other federal funds reallocated by the federal government.

(b) The commission may vary from the distribution procedure provided by Subsection (a) if it issues a ruling or minute order identifying the variance and providing a particular justification for the variance.

SECTION 1.18. Subchapter C, Chapter 222, Transportation Code, is amended by adding Section 222.053 to read as follows:

Sec. 222.053. RELIEF FROM LOCAL MATCHING FUNDS REQUIREMENT. (a) In this section, "economically disadvantaged county" means a county that has, in comparison to other counties in the state:

- (1) below average per capita taxable property value;
- (2) below average per capita income; and
- (3) above average unemployment.

(b) Except as provided by Subsection (c), the commission may require, request, or accept from a political subdivision matching or other local funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives to make the most efficient use of its highway funding.

(c) In evaluating a proposal to construct, maintain, or extend a highway or for another type of highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, the commission:

(1) may not consider the absence or value of local incentives provided under Subsection (b) or the value of a benefit received by the state in an agreement under Section 791.031, Government Code, beyond the minimum required local matching funds; and

(2) shall adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement.

(d) In making an adjustment under Subsection (c)(2), the commission may use its in-kind resources and any other available resources to help satisfy a federal requirement.

(e) The commission shall report annually to the governor, the lieutenant governor, and the speaker of the house of representatives on the use of matching funds and local incentives and the ability of the commission to ensure that political subdivisions located in economically disadvantaged counties have equal ability to compete for highway funding with political subdivisions in counties that are not economically disadvantaged.

SECTION 1.19. Subsection (c), Section 202.052, Transportation Code, is amended to read as follows:

(c) The department shall charge not less than fair market value for the highway asset, payable in cash, services, tangible or intangible property, or any combination of cash, services, or property.

SECTION 1.20. Chapter 202, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TELECOMMUNICATIONS FACILITIES

Sec. 202.091. **DEFINITION.** In this subchapter, "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

Sec. 202.092. **USE OF DEPARTMENT FACILITIES.** Notwithstanding any other law, a telecommunications provider may not place or maintain its facilities or otherwise use improvements, including structures, medians, conduits, or telecommunications equipment or lines, constructed or installed by the state as components of the state highway system except by a lease under Section 202.052 or an agreement under Section 202.093.

Sec. 202.093. **AGREEMENT.** (a) Notwithstanding any other law, the department may enter into an agreement with a telecommunications provider allowing the provider, for the provider's commercial purposes, to:

(1) place the provider's telecommunications facilities within the median of a divided state highway; or

(2) place lines within or otherwise use telecommunications facilities owned or installed by the state in or on the improved portion of a state highway, including a median, structures, equipment, conduits, or any other component of the highway facilities constructed or owned by the department.

(b) An agreement entered into under Subsection (a) may provide for compensation between the department and the telecommunications provider in the form of cash or the shared use of facilities.

Sec. 202.094. **COMPETITIVE SEALED PROPOSAL.** (a) Before entering into an agreement with a telecommunications provider under this subchapter, the department shall follow a procedure using competitive sealed proposals.

(b) The department shall solicit proposals by a request for proposals and shall publish notice of the request in at least two newspapers of general circulation and in the Texas Register.

(c) The proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. After a contract is awarded, all proposals that have been submitted shall be open for public inspection subject to Subchapter C, Chapter 552, Government Code.

(d) The department may discuss an acceptable or potentially acceptable proposal with an offeror to assess the offeror's ability to meet the solicitation requirements. After the

submission of a proposal but before making an award, the department may permit the offeror to revise the proposal in order to obtain the best final offer. The department may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this section. The department shall provide each offeror with an equal opportunity for discussion and revision of proposals.

(e) The department shall make a written award of a contract to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the department finds that none of the offers is acceptable, it shall refuse all offers. The contract file must state in writing the basis on which the award is made.

Sec. 202.095. **APPLICABILITY.** (a) Subtitle D, Title 10, Government Code, does not apply to a procurement under this subchapter.

(b) This subchapter does not limit a telecommunications provider from placing lines or facilities in the unimproved portion of state highway right-of-way to the extent authorized by applicable law.

Sec. 202.096. **REVENUE.** The department shall deposit in the state highway fund any revenue received under this subchapter.

Sec. 202.097. **RULEMAKING.** The commission shall adopt rules for the implementation of this subchapter.

SECTION 1.21. Chapter 222, Transportation Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. STATE INFRASTRUCTURE BANK

Sec. 222.071. **DEFINITIONS.** In this subchapter:

- (1) "Bank" means the state infrastructure bank account.
- (2) "Construction" has the meaning assigned by 23 U.S.C. Section 101.
- (3) "Federal act" means Section 350 of the National Highway System Designation Act of 1995 (Pub. L. No. 104-59).
- (4) "Federal-aid highway" has the meaning assigned by 23 U.S.C. Section 101.
- (5) "Qualified project" includes:
 - (A) the construction of a federal-aid highway;
 - (B) a transit project under 49 U.S.C. Sections 5307, 5309, and 5311; or
 - (C) for the expenditure of secondary funds, a project eligible for assistance under Title 23 or Title 49, United States Code.
- (6) "Secondary funds" includes:
 - (A) the repayment of a loan or other assistance that is provided with money deposited to the credit of the bank; and
 - (B) investment income generated by secondary funds deposited to the credit of the bank.

Sec. 222.072. **STATE INFRASTRUCTURE BANK.** (a) The state infrastructure bank is an account in the state highway fund. The bank is administered by the commission.

(b) Federal funds received by the state under the federal act, matching state funds in an amount required by that act, proceeds from bonds issued under Section 222.075, money saved as a result of contracting with a private entity for maintenance and repair services for department vehicles, secondary funds, and other money received by the state that is eligible for deposit in the bank may be deposited into the bank and used only for the purposes described in this subchapter.

Sec. 222.073. **PURPOSES OF INFRASTRUCTURE BANK.** The commission shall use money deposited in the bank to:

(1) encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state; and

(2) develop financing techniques designed to:

(A) expand the availability of funding for transportation projects and to reduce direct state costs;

(B) maximize private and local participation in financing projects; and

(C) improve the efficiency of the state transportation system.

Sec. 222.074. FORM OF ASSISTANCE. (a) To further a purpose described by Section 222.073, the commission may use money deposited to the credit of the bank to provide financial assistance to a public or private entity for a qualified project to:

(1) extend credit by direct loan;

(2) provide credit enhancements;

(3) serve as a capital reserve for bond or debt instrument financing;

(4) subsidize interest rates;

(5) insure the issuance of a letter of credit or credit instrument;

(6) finance a purchase or lease agreement in connection with a transit project;

(7) provide security for bonds and other debt instruments; or

(8) provide methods of leveraging money that have been approved by the United States secretary of transportation and relate to the project for which the assistance is provided.

(b) Financial assistance to a private entity under Subsection (a) shall be limited to a qualified project that:

(1) provides transportation services or facilities that provide a demonstrated public benefit; or

(2) is constructed or operated in cooperation with a state agency or political subdivision in accordance with an agreement between that agency or political subdivision and the private entity.

Sec. 222.075. REVENUE BONDS. (a) The commission may issue revenue bonds for the purpose of providing money for the bank.

(b) Except as provided by Subsection (c), the commission may issue revenue bonds or revenue refunding bonds under this section without complying with any other law applicable to the issuance of bonds.

(c) Notwithstanding any other provision of this section, the following laws apply to bonds issued by the commission:

(1) Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes);

(2) Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes);

(3) the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes);

(4) Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes);

(5) Article 3, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes); and

(6) Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(d) The revenue bonds are special obligations of the commission payable only from income and receipts of the bank as the commission may designate. The income and receipts include principal of and interest paid and to be paid on acquired obligations, other designated obligations held by the bank, or income from accounts created within the bank.

(e) The revenue bonds do not constitute a debt of the state or a pledge of the faith and credit of the state.

(f) *The commission may require participants to make charges, levy taxes, or otherwise provide for sufficient money to pay acquired obligations.*

(g) *Revenue bonds issued under this section shall be authorized by order of the commission and shall have the form and characteristics and bear the designations as are provided in the order.*

(h) *Revenue bonds shall:*

(1) *be dated;*

(2) *bear interest at the rate or rates authorized by law;*

(3) *mature at the time or times, serially, as term, revenue bonds, or otherwise not more than 50 years after their dates;*

(4) *be called before stated maturity on the terms and at the prices, be in the denominations, be in the form, either coupon or registered, carry registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or one denomination for bonds of other denominations, and successive exchange of registered revenue bonds for coupon revenue bonds, be executed in the manner, and be payable at the place or places inside or outside the state, as provided in the order;*

(5) *be issued in temporary or permanent form;*

(6) *be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the commission to be the most advantageous reasonably obtainable; and*

(7) *be issued on a parity with and be secured in the manner as other revenue bonds authorized to be issued by this section or be issued without parity and secured differently from other revenue bonds.*

(i) *All proceedings relating to the issuance of revenue bonds issued under this section shall be submitted to the attorney general for examination. On determining that the revenue bonds have been authorized in accordance with law, the attorney general shall approve the revenue bonds, and the revenue bonds shall be registered by the comptroller. After the approval and registration, the revenue bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.*

(j) *The proceeds received from the sale of revenue bonds shall be deposited in the bank and invested in the manner provided for other funds deposited under this subchapter.*

Sec. 222.076. SEPARATE SUBACCOUNTS. The bank shall consist of at least two separate subaccounts, a highway subaccount and a transit subaccount.

Sec. 222.077. REPAYMENT TERMS; DEPOSIT OF REPAYMENTS; INVESTMENT INCOME. (a) Any funds disbursed through the state infrastructure bank must be repaid on terms determined by the commission that comply with the federal act.

(b) *Notwithstanding any other law to the contrary:*

(1) *the repayment of a loan or other assistance provided with money deposited to the credit of a subaccount in the bank shall be deposited in that subaccount; and*

(2) *investment income generated by money deposited to the credit of a subaccount in the bank shall be:*

(A) *credited to that subaccount;*

(B) *available for use in providing financial assistance under this subchapter; and*

(C) *invested in United States Treasury securities, bank deposits, or other financing instruments approved by the United States secretary of transportation to earn interest and enhance the financing of projects assisted by the bank.*

(c) *The commission shall administer the bank in compliance with the federal act and any applicable federal regulation or guideline.*

(d) *The commission by rule shall:*

(1) *implement this subchapter; and*

(2) establish eligibility criteria for an entity applying for financial assistance from the bank.

Sec. 222.078. REPORT TO LEGISLATURE. (a) Not later than January 1, 2001, the department shall submit a report to the legislature on the status of projects funded by the state infrastructure bank and the use of the bank. The report must include information about:

- (1) the financial and operational status of projects assisted by the bank;
- (2) the financial condition of the bank, including fund balances;
- (3) the cumulative value of investments made; and
- (4) the extent to which projects assisted by the bank have aided the state in meeting the state's transportation needs.

(b) This section expires January 1, 2001.

SECTION 1.22. Subchapter A, Chapter 223, Transportation Code, is amended by adding Sections 223.012 and 223.013 to read as follows:

Sec. 223.012. CONTRACTOR PERFORMANCE. (a) The department shall:

- (1) develop a schedule for liquidated damages that accurately reflects the costs associated with project completion delays, including administrative and travel delays;
- (2) review contractor bidding capacity to ensure that contractors meet each quality, safety, and timeliness standard established by the commission; and
- (3) conduct a review to determine whether commission rules or state law should be changed to realize significant cost and time savings on state highway construction and maintenance projects.

(b) Not later than December 1, 1998, the department shall file a report with the governor, the lieutenant governor, and the speaker of the house of representatives containing:

- (1) the results of the review conducted under Subsection (a)(3); and
- (2) recommendations on legislation the commission determines is necessary to realize significant cost and time savings on state highway construction and maintenance.

Sec. 223.013. ELECTRONIC BIDDING SYSTEM. (a) The department may establish an electronic bidding system for highway construction and maintenance contracts.

(b) The system must permit a qualified vendor to electronically submit a bid, including any contract, signature, or verification of a guaranty check by a financial institution.

(c) That part of Section 223.004(a) requiring a bid to be opened at a public hearing of the commission does not apply to an electronically submitted bid. A copy of each electronically submitted bid shall be publicly posted within 48 hours after bids are opened.

(d) After the electronic bidding system is established, the department shall take the actions necessary to recover the department's costs of manually processing bids from a person who does not submit an electronic bid.

SECTION 1.23. Section 223.041, Transportation Code, is amended to read as follows:

Sec. 223.041. ENGINEERING AND DESIGN CONTRACTS. (a) The department shall use private sector engineering-related services to assist in accomplishing its activities in providing transportation projects. For the purpose of this section, engineering-related services means engineering, land surveying, environmental, transportation feasibility and financial, architectural, real estate appraisal, and materials laboratory services. These engineering-related services are for highway improvements, right-of-way acquisition, and aviation improvements ~~[department's policy regarding the regular use of private sector professional services for preliminary and construction engineering and engineering design shall achieve a balance between the use of department employees and the use of private contractors if the costs are equivalent].~~

(b) The department, in setting a minimum level of expenditures in these engineering-related activities that will be paid to the private sector providers, shall index the level of expenditures from the amount set by rider in the General Appropriations Act enacted by the 75th Legislature at its regular session in 1997, expressed as a percentage of the total funds

appropriated in Strategy A.1.1. ~~Plan/Design/Manage [office of the state auditor shall determine relevant costs to be considered under Subsection (a)].~~

(c) Beginning in fiscal year 2000, the department shall increase its expenditures to private sector providers for engineering-related services at least one percentage point per year until the expenditure level for a fiscal year in all strategies paid to private sector providers for all department engineering-related services for transportation projects reaches a minimum of 35 percent of funds appropriated in Strategy A.1.1. ~~Plan/Design/Manage of the General Appropriations Act for that biennium.~~ The department shall attempt to make expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code, in an amount consistent with the applicable provisions of the Government Code, any applicable state disparity study, and in accordance with the good-faith-effort procedures outlined in the rules adopted by the General Services Commission.

(d) The commission shall ~~may~~ provide for hearings at which private sector complaints relating to the selection process are heard.

SECTION 1.24. Chapter 224, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CONGESTION MITIGATION PROJECTS AND FACILITIES

Sec. 224.151. **DEFINITIONS.** In this subchapter:

(1) "Congestion" means the level at which transportation system performance is no longer acceptable because of traffic interference. The level of acceptable system performance may vary by type of transportation facility, geographic location, or time of day.

(2) "Congestion mitigation" means projects and facilities used to reduce congestion to promote the use of carpools and vanpools, improve air quality, conserve fuel, and enhance the use of existing highways and facilities on the state highway system.

(3) "High occupancy vehicle" means a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) "High occupancy vehicle lane" means one or more lanes of a highway or an entire highway where high occupancy vehicles, trucks, or emergency vehicles in any combination are given at all times, or at regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of all highway traffic.

(5) "Motor vehicle" has the meaning assigned by Section 522.003.

(6) "Transportation corporation" means a transportation corporation created by the state under Chapter 431.

Sec. 224.152. **PURPOSE.** (a) Subject to the availability of state and federal funds, it is the intent of the legislature to further the purposes of the United States Congress as expressed in 23 U.S.C. Sections 134, 135, 146, and 149 and in Section 1012(b) of Pub. L. No. 102-240 to conserve fuel, decrease traffic congestion during rush hours, improve air quality, develop innovative techniques to finance transportation projects, and enhance the use of existing highways and facilities.

(b) The legislature declares that it is necessary, to further the purposes described by Subsection (a), to provide for the participation of the commission and the department in projects and facilities for the purpose of congestion mitigation.

Sec. 224.153. **HIGH OCCUPANCY VEHICLE LANES AUTHORIZED.** (a) The commission may designate and the department or a transportation corporation may design, construct, operate, or maintain one or more lanes on a multi-lane highway facility as dedicated high occupancy vehicle lanes on the state highway system.

(b) The commission may spend or allocate any available funds to:

(1) designate highway lanes as preferential carpool or high occupancy vehicle lanes and create facilities to relieve traffic congestion; or

(2) make any other designation of a dedicated high occupancy vehicle lane on the state highway system.

Sec. 224.154. **CONGESTION MITIGATION.** (a) Notwithstanding any law of this state relating to charging tolls on existing free public highways, the commission may by order authorize the department or a transportation corporation to charge a toll for the use of one or more lanes of a state highway facility, including a high occupancy vehicle lane, for the purposes of congestion mitigation. The commission may enter into an agreement with a regional tollway authority described in Chapter 366, or a transit authority described in Chapter 451, 452, or 453, to charge a toll for the use of one or more lanes of a state highway facility under this subsection.

(b) The commission may by order set the amount of toll charges. Any toll charges shall be imposed in a reasonable and nondiscriminatory manner.

(c) For purposes of congestion mitigation projects and facilities under this subchapter, the department, a transportation corporation, and a regional tollway authority or a transit authority with whom the commission has an agreement under this section are successor agencies to the Texas Turnpike Authority for purposes of Section 52-b, Article III, Texas Constitution.

(d) Revenue generated from toll charges and administrative fees assessed by the department in connection with a congestion mitigation facility shall be deposited in the state highway fund and may be used only for projects for the improvement of the state highway system. Revenue generated from toll charges and administrative fees assessed by an entity with whom the commission contracts under this section shall be allocated as required by the terms of the agreement.

(e) The powers granted by this section are subject to the restrictions of 23 U.S.C. Section 129.

Sec. 224.155. **FAILURE OR REFUSAL TO PAY TOLL CHARGES.** Any motor vehicle other than a police or emergency vehicle that is driven or towed through a toll collection facility shall pay the proper toll.

Sec. 224.156. **ADMINISTRATIVE FEE; NOTICE.** (a) In the event of nonpayment of the proper toll, on issuance of proper notice of nonpayment, the registered owner of the nonpaying vehicle is legally bound to pay both the proper toll and an administrative fee.

(b) The commission by rule and a transportation corporation by order of its board of directors may respectively fix an administrative fee, not to exceed \$100, to recover the cost of collecting an unpaid toll. The notice of nonpayment to the registered owner shall be sent by the department by first-class mail not later than 30 days after the date of the alleged failure to pay and may require payment not sooner than 30 days after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment.

(c) If the registered owner of the vehicle fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment issued under this section, the registered owner shall be cited as for other traffic violations for the nonpayment, and the owner is legally bound to pay a fine, not to exceed \$250, for each event of nonpayment. Neither the legal obligation to pay nor the actual payment of the fine affects the legal duty of the owner for any other fine or penalty prescribed by law.

Sec. 224.157. **PROSECUTIONS.** (a) In the prosecution of a violation under Sections 224.155 and 224.156, proof that the vehicle passed through a toll collection facility without payment of the proper toll, together with proof that the defendant was the registered owner of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner.

(b) The court of the local jurisdiction in which the violation occurred may assess and collect the fine in addition to any court costs. The court shall also collect the proper toll and administrative fee and forward the toll and fee to the department or to the transportation corporation.

(c) It is a defense to nonpayment under Section 224.155 or 224.156 that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not

recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

- (1) the occurrence of the failure to pay; or
- (2) eight hours after discovery of the theft.

(d) A registered owner who is a lessor of a vehicle concerning which a notice of nonpayment was issued under Section 224.158 is not liable in connection with that notice of nonpayment if, not later than 30 days after the date the notice of nonpayment is mailed, the registered owner provides to the department or the transportation corporation a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment, with the name and address of the lessee clearly legible. Failure to provide this information within the period prescribed renders the lessor liable as the registered owner. If the lessor provides the required information within the period prescribed, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this subchapter and is subject to prosecution for failure to pay the proper toll as if the lessee were the registered owner, if the department or the transportation corporation sends a notice of nonpayment to the lessee by first-class mail within 30 days after the date of receipt of the required information from the lessor.

Sec. 224.158. **USE AND RETURN OF TRANSPONDERS.** (a) For purposes of this section, a "transponder" means a device, placed on or within a motor vehicle, that is capable of transmitting information used to assess or collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any law enforcement officer of the Department of Public Safety has the authority to seize a stolen or insufficiently funded transponder and to return it to the department or the transportation corporation, except that an insufficiently funded transponder may not be seized sooner than 30 days after the date the department or the transportation corporation has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll collection locations, to enhance traffic flow, and to otherwise increase efficiency of operations:

- (1) the department;
- (2) a regional tollway authority governed by Chapter 366;
- (3) a transportation corporation;
- (4) an entity to which a project authorized by this subchapter is transferred by an entity described by Subdivision (1), (2), or (3); or
- (5) a third-party service provider under contract with an entity described by Subdivision (1), (2), (3), or (4).

Sec. 224.159. **ADOPTION OF RULES; PRESCRIBE FORMS.** The commission shall adopt rules and prescribe forms to administer this subchapter.

SECTION 1.25. Section 431.073, Transportation Code, is amended to read as follows:

Sec. 431.073. **PROJECT IN COUNTY OF 500,000 [1.5 MILLION] OR MORE OR ADJACENT COUNTY.** (a) This section applies only to a corporation [~~in existence on August 31, 1991,~~] that was created by the state or one or more counties or municipalities to implement a transportation project in:

- (1) a county with a population of 500,000 [~~1.5 million~~] or more; or
- (2) a county adjacent to a county described by Subdivision (1).

(b) If approved and authorized by the commission, a corporation created by the state has the rights, powers, privileges, authority, and functions given the department under this title to:

- (1) construct, improve, operate, and maintain high occupancy vehicle lanes; and
- (2) charge a toll for the use of one or more high occupancy vehicle lanes for the purpose of congestion mitigation.

(c) A corporation in existence on August 31, 1991, has the powers, rights, and privileges of a corporation created under Chapter 11, Title 32, Revised Statutes, as that law existed on August 31, 1991, except that the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or each governing body creating the corporation.

SECTION 1.26. Section 224.033, Transportation Code, is amended to read as follows:

Sec. 224.033. COUNTY IMPROVEMENT OF STATE SYSTEM. (a) The *commission may enter into an agreement with the commissioners court of a county* [~~may contract with the department~~] for the improvement by the county of the state highway system.

(b) In this section, "improvement" means *construction, reconstruction, maintenance, and the making of a necessary plan or survey before beginning construction, reconstruction, or maintenance and includes a project or activity*;

(4) appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveways, landscaping, signs, lights, or guardrails[~~;~~ or

(2) involving maintenance of a state highway and appurtenant facilities].

SECTION 1.27. Section 251.014, Transportation Code, is amended to read as follows:

Sec. 251.014. COUNTY IMPROVEMENT OF STATE HIGHWAY. (a) The commissioners court of a county may *enter into an agreement* [~~contract~~] with the *commission* [~~department~~] for the county to carry out a project or activity for the improvement of a segment of the state highway system.

(b) In this section, "improvement" means *construction, reconstruction, maintenance, and the making of a necessary plan or survey before beginning construction, reconstruction, or maintenance and includes a* [~~if the~~] project or activity;

(4) [~~is~~] appurtenant to a state highway, including surveying, making a traffic count, or landscaping or an activity relating to a drainage facility, driveway, sign, light, or guardrail[~~;~~ or

(2) involves maintenance of a state highway or appurtenant facility].

SECTION 1.28. Chapter 455, Transportation Code, is amended by adding Section 455.0015 to read as follows:

Sec. 455.0015. *TRANSPORTATION NEEDS OF CLIENTS OF HEALTH AND HUMAN SERVICES AGENCIES.* (a) *In performing its public transportation planning and funding activities, the department shall consider and include the transportation needs of those persons who are clients of the health and human services agencies of this state.*

(b) *It is the intent of the legislature that, whenever possible, and to the maximum extent feasible, the existing network of transportation providers, and in particular the fixed route components of the existing networks, be used to meet the client transportation requirements of the state's social service agencies and their agents. The legislature recognizes the contributions of nonprofit entities dedicated to providing social services and related activities and encourages the continued community involvement of these entities in this area.*

SECTION 1.29. Subtitle K, Title 6, Transportation Code, is amended by adding Chapter 459 to read as follows:

CHAPTER 459. COORDINATION OF TRANSPORTATION SERVICES

Sec. 459.001. *DEFINITIONS.* In this chapter:

(1) "Social services provider" means a state agency or political subdivision of this state, including a contractor of an agency or political subdivision, that:

(A) provides social services under the Health and Safety Code, the Human Resources Code, or the Labor Code; and

(B) receives from the state or federal government funds that may be spent to provide, subsidize, or reimburse the cost of transportation services.

(2) "Transportation provider" means an entity that provides public transportation services under Chapter 451, 452, or 453 of this code or Chapter 645, Acts of the 74th Legislature, 1995 (Article 6663c-1, Vernon's Texas Civil Statutes).

Sec. 459.002. COORDINATION WITH TRANSPORTATION PROVIDERS. A social services provider shall coordinate with each local transportation provider to the greatest extent possible to maximize the efficiency and effectiveness of transportation services available to social services clients. The social services provider shall reimburse each transportation provider for services performed, including paratransit transportation services, in accordance with applicable contracts or vendor agreements.

Sec. 459.003. INVENTORY OF CURRENT CONTRACTS. (a) Not later than October 1 of each year, the department shall provide a listing of transportation providers to the executive director of each state agency that provides social services under the Health and Safety Code, the Human Resources Code, or the Labor Code. The listing shall include the name, address, and telephone number of each transportation provider, the name of a designated contact person for each transportation provider, and the names of the counties served by each transportation provider. The department shall also provide a listing of areas not served by a transportation provider along with the name, address, telephone number, and the name of the designated contact person of each transportation provider serving an area contiguous to an unserved area.

(b) Not later than November 1 of each year, the executive director of a state agency receiving information under Subsection (a) shall forward the listing of transportation providers, including the listing for unserved areas, to each social services provider that contracts for client transportation services within a transportation provider's service area or a contiguous unserved area under the state agency's programs.

(c) A social services provider receiving information under Subsection (b) shall, not later than January 1 of each year, provide to the transportation provider an inventory of current contracts and in-house capital resources for the provision of client transportation services within each transportation provider's service area or an area contiguous to the service area that is not served by a transportation provider.

(d) At a minimum, the inventory under Subsection (c) must include the name of the social services provider, the duration and dollar amount of the contract, the unit or service rate, a geographic description of the service area, and a description of the type of service provided.

SECTION 1.30. Section 623.074, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may by rule authorize an applicant to submit an application electronically. An electronically submitted application shall be considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application. For purposes of this subsection, "digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

SECTION 1.31. (a) Not later than April 30, 1998, the Texas Department of Transportation shall complete a study of alternative routes for a second transportation link from the mainland to South Padre Island that would:

- (1) provide an alternative for emergency ingress or egress for permanent residents and daily and overnight visitors;
- (2) better disperse the traffic on the island to reduce congestion at the southern end of the island;
- (3) reduce the travel time and cost by providing a more direct route to the island from upper Rio Grande Valley locations and provide relief to traffic congestion in municipalities along existing highway routes; and
- (4) give priority to environmentally friendly alternative options, such as a light-rail highway combination, that could be anchored at the Valley International Airport and the South Padre Convention Center or at other logical destinations.

(b) The Texas Department of Transportation shall, not later than December 31, 1998, report to the legislature on the department's plans to implement the recommendations of the study described by Subsection (a) of this section.

SECTION 1.32. Subsection (b), Section 201.109, Transportation Code, is amended to read as follows:

(b) In carrying out this section, the commission shall provide for:

(1) maximizing the generation of revenue from existing assets of the department, including real estate;

(2) increasing the role of the private sector and public-private projects in the leasing of real estate and other assets in the development of highway projects;

(3) setting and attempting to meet annual revenue enhancement goals;

(4) reporting on the progress in meeting revenue enhancement goals in the department's annual report; ~~and~~

(5) contracting for an independent audit of the department's management and business operations in 2001 and each 12th year after 2001; ~~and~~

(6) *developing a cost-benefit analysis between the use of local materials previously incorporated into roadways versus use of materials blended or transported from other sources.*

SECTION 1.33. Subchapter C, Chapter 791, Government Code, is amended by adding Section 791.031 to read as follows:

Sec. 791.031. TRANSPORTATION INFRASTRUCTURE. (a) This section applies only to a local government, other than a school district, that is authorized to impose ad valorem taxes on real property.

(b) The Texas Department of Transportation may enter into an interlocal contract with a local government for the financing of transportation infrastructure that is constructed or that is to be constructed in the territory of the local government by the department in a corridor of land on which no existing state or federal highway is located.

(c) The agreement must include:

(1) the duration of the agreement, which may not exceed 12 years;

(2) a description of each transportation infrastructure project or proposed project;

(3) a map showing the location of each project and property included in the contract; and

(4) an estimate of the cost of each project.

(d) The agreement may establish one or more transportation infrastructure zones. The Texas Department of Transportation and the local government may agree that at one or more specified times, the local government will pay to the Texas Department of Transportation an amount that is calculated on the basis of increased ad valorem tax collections in a zone that are attributable to increased values of property located in the zone resulting from an infrastructure project. The amount may not exceed an amount that is equal to 30 percent of the increase in ad valorem tax collections for the specified period.

(e) Money received by the Texas Department of Transportation under this section may be used:

(1) to provide a local match for the acquisition of right-of-way in the territory of the local government; or

(2) for design, construction, operation, or maintenance of transportation facilities in the territory of the local government.

SECTION 1.34. Subtitle A, Title 4, Transportation Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. PORT AUTHORITY ADVISORY COMMITTEE

Sec. 53.001. PORT AUTHORITY ADVISORY COMMITTEE. (a) The port authority advisory committee consists of five members appointed by the Texas Transportation Commission to advise the commission and the Texas Department of Transportation on matters relating to port authorities, including:

(1) intermodal and multimodal transportation issues relating to Texas waterways and ports and port improvements; and

(2) *the identification and development of funding mechanisms, including the state infrastructure bank, for addressing the issues described by Subdivision (1).*

(b) *The members shall be appointed as follows:*

(1) *one member who represents the Port of Houston Authority of Harris County, Texas;*

(2) *two members who represent ports other than Houston on the upper Texas coast; and*

(3) *two members who represent ports on the lower Texas coast.*

(c) *A committee member serves at the pleasure of the Texas Transportation Commission.*

(d) *A committee member may not receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing the member's duties.*

(e) *The Texas Transportation Commission may adopt rules to govern the operations of the committee.*

SECTION 1.35. Section 201.105, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) *The commission may require by rule that any product or material that is approved for use in any one district may be approved for use by any other district.*

SECTION 1.36. (a) Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.112 to read as follows:

Sec. 201.112. **CONTRACT CLAIMS.** (a) *The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:*

(1) *Section 22.018;*

(2) *Chapter 223; or*

(3) *Chapter 2254, Government Code.*

(b) *If a person with a claim is dissatisfied with the department's resolution of the claim under the procedures authorized under Subsection (a), the person may request a formal administrative hearing to resolve the claim under Chapter 2001, Government Code.*

(c) *An administrative law judge's proposal for decision rendered under Chapter 2001, Government Code, shall be submitted to the director for adoption. Notwithstanding any law to the contrary, the director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The director shall provide a written statement containing the reason and legal basis for a change made under this subsection.*

(d) *The director's final order is subject to judicial review under Chapter 2001, Government Code, under the substantial evidence rule.*

(e) *This section does not waive state immunity from liability.*

(b) Notwithstanding any other law, the procedures prescribed by Section 201.112, Transportation Code, as added by Subsection (a) of this section, shall constitute the exclusive remedy at law for the resolution of a claim governed by that section.

(c) Section 201.112, Transportation Code, as added by Subsection (a) of this section, applies to any claim governed by that section:

(1) *filed with the Texas Department of Transportation on or after the effective date of this Act; or*

(2) *pending before the Texas Department of Transportation on the effective date of this Act.*

(d) For purposes of Subdivision (2) of Subsection (c) of this section, a claim is pending before the Texas Department of Transportation if the claim has been filed, but the claimant has not sought judicial review under Chapter 2001, Government Code.

SECTION 1.37. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.2035 to read as follows:

Sec. 201.2035. ACCOUNTING STRUCTURE. The department shall create and maintain an accounting structure for roadway and warehouse inventory of the department. The accounting structure must provide for the accounting for lost or destroyed materials.

SECTION 1.38. Subchapter F, Chapter 201, Transportation Code, is amended by adding Section 201.406 to read as follows:

Sec. 201.406. RELOCATION ASSISTANCE. (a) In addition to authority granted by other law, the department may reimburse transferred employees for expenses or costs related to selling existing housing and purchasing and financing comparable replacement housing if the director determines that the transfer will enhance the department's ability to accomplish its goals and missions.

(b) For purposes of this section, the following expenses or costs related to the selling of existing housing and the leasing, purchasing, and financing of comparable replacement housing are reimbursable:

- (1) any commissions and fees due to a broker or real estate agent;*
- (2) costs incurred as a purchaser to obtain a home loan, including loan application fees, credit report fees, and mortgage points;*
- (3) origination fees, title insurance, recording fees, and all other closing costs required to be paid by the employee;*
- (4) fees or charges, other than refundable deposits, necessary to establish telephone, gas, and electric service; and*
- (5) travel expenses incurred while looking for a new residence, reimbursed at the standard mileage rate, for travel to and from the new designated headquarters.*

(c) Under this section, the department may not:

- (1) provide reimbursement for more than five employees per fiscal year;*
- (2) pay a sum of more than \$15,000 to any employee;*
- (3) purchase or pay any part of the purchase price of any employee's home;*
- (4) provide reimbursement for the purchase or financing of a house if the employee did not own and occupy existing housing at the time of transfer; or*
- (5) provide reimbursement when the distance between the two designated headquarters of a transferred employee is less than 25 miles.*

(d) The department may pay the reasonable, necessary, and resulting costs of moving the household goods and effects of a transferred employee if:

- (1) the director determines that the transfer will enhance the department's ability to accomplish its goals and missions; and*
- (2) the distance between the two designated headquarters of a transferred employee is at least 25 miles.*

SECTION 1.39. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.610 to read as follows:

Sec. 201.610. HIGHWAY SOUND BARRIERS. The department may erect a sound barrier to reduce the noise from a road or highway in the state highway system at any location the department determines is appropriate, including along the right-of-way of a railroad that runs parallel or adjacent to a road or highway.

SECTION 1.40. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.611 to read as follows:

Sec. 201.611. COORDINATION OF FLOOD CONTROL. In the construction of its highway projects, the department shall coordinate with local flood control authorities to minimize the impact of flooding.

SECTION 1.41. Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.706 to read as follows:

Sec. 201.706. LOCAL GOVERNMENT ASSISTANCE. From appropriated funds, the department shall assist counties with materials to repair and maintain county roads. The department shall:

- (1) provide that the total annual value of assistance under this section is:
 - (A) at least \$12 million per year for fiscal years 1998 and 1999; and
 - (B) at least \$6 million per year for a fiscal year other than 1998 or 1999;
- (2) make maximum usage of surplus materials on hand;
- (3) develop rules and procedures to implement this section and to provide for the distribution of the assistance with preference given to counties with an above average number of overweight trucks receiving weight tolerance permits based on the previous year's permit totals; and
- (4) undertake cooperative and joint procurement of road materials with counties under General Services Commission procedures.

SECTION 1.42. Subtitle B, Title 6, Transportation Code, is amended by adding Chapter 226 to read as follows:

CHAPTER 226. EMERGENCY HIGHWAY CALL BOX SYSTEM

Sec. 226.001. DEFINITION. In this chapter, "emergency response services" means:

- (1) fire-fighting, law enforcement, or emergency medical services that are provided by a public agency; or
- (2) motorist assistance services.

Sec. 226.002. APPLICABILITY; LIMITATION ON EXPENDITURES. This chapter does not:

- (1) apply to a segment of a highway that the commission has designated as a farm-to-market or ranch-to-market road; or
- (2) authorize the department to make an expenditure of money for the implementation, operation, or maintenance of the emergency telephone call box system out of the state highway fund.

Sec. 226.003. INSTALLATION, OPERATION, AND MAINTENANCE OF CALL BOX SYSTEM. (a) The department may provide for the installment, operation, and maintenance of a system of emergency telephone call boxes along those highways in this state that are part of the designated state highway system.

(b) The system may:

- (1) be designed to enable users of those highways to request emergency and nonemergency response services;
- (2) include:
 - (A) wired or wireless telecommunications services; and
 - (B) one or more motorist assistance answering centers; and
- (3) be capable of performing compatible Intelligent Transportation System (ITS) functions.

(c) To minimize call processing loads in public safety answering points established under Chapter 771 or 772, Health and Safety Code, the department may contract with a private entity to perform the functions of a motorist assistance answering center under Subsection (b)(2)(B).

Sec. 226.004. FUNDING. The department may implement a call box system under this chapter if a public or private entity provides all direct and indirect costs necessary for the installment, operation, and maintenance of the system.

Sec. 226.005. LOCATION OF AND DISTANCE BETWEEN CALL BOXES. The location of the emergency call boxes shall be determined by the department in accordance with the design specifications of the system.

Sec. 226.006. CONTRACTS FOR IMPLEMENTATION AND INSTALLATION. (a) The department may award a contract for the installation, maintenance, or operation of a call box system in the manner provided by Chapter 223.

(b) *The department may solicit proposals for and enter into one or more lease-purchase agreements under this chapter.*

Sec. 226.007. INTERGOVERNMENTAL COOPERATION. *The Advisory Commission on State Emergency Communications, agencies of this state, and each county and municipality in this state shall cooperate in the design, establishment, operation, and maintenance of the emergency telephone call box system.*

SECTION 1.43. (a) Section 472.011, Transportation Code, is amended to read as follows:

Sec. 472.011. DEFINITION. In this subchapter, "personal property" includes *personal property of any kind or character, including:*

- (1) *a vehicle, as defined by Section 502.001, that is damaged or disabled;*
- (2) *spilled cargo;[.]*
- (3) *a hazardous material as defined by 49 U.S.C. App. Section 1802;[.] and*
- (4) *a hazardous substance as defined by Section 26.263, Water Code.*

(b) Section 472.014, Transportation Code, is amended to read as follows:

Sec. 472.014. DEPARTMENT NOT LIABLE FOR DAMAGES. *Notwithstanding any other provision of law, the [The] department and its officers and employees are not liable for:*

- (1) *any damage to personal property resulting from its removal or disposal by the department unless the removal or disposal is carried out recklessly or in a grossly negligent manner; or*
- (2) *any damage resulting from the failure to exercise authority granted under this subchapter.*

SECTION 1.44. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2703 to read as follows:

Sec. 502.2703. PROFESSIONAL SPORTS TEAM LICENSE PLATES. (a) *The department shall issue for passenger cars and light trucks specially designed license plates that include the name and insignia of a professional sports team located in this state.*

(b) *The department may not issue a license plate under this section for a particular professional sports team unless that team:*

- (1) *certifies to the department that it has determined that at least 5,000 persons will apply for the plates; and*
- (2) *plays its home games in a facility constructed or operated, in whole or in part, with public funds.*

(c) *Except as provided by Subsection (b), the department shall issue license plates under this section to a person who:*

- (1) *applies to the county assessor-collector of the county in which the person resides on a form provided by the department; and*
- (2) *pays an annual fee of \$35, in addition to the fee prescribed by Section 502.161 and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.*

(d) *Of each fee collected under this section, the department shall:*

- (1) *send \$25 to the public entity that provided public funds for the construction or renovation of the facility in which the professional sports team plays its home games or that provides public funds for the operation of that facility; and*
- (2) *deposit \$10 to the credit of the state highway fund.*

(e) *Funds distributed to a public entity under Subsection (d)(1) shall be deposited to the credit of the venue project fund, if the public entity has created a venue project fund under Section 334.042 or 335.072, Local Government Code. If the public entity has not created a venue project fund, funds distributed to a public entity under Subsection (d)(1) must first be used to retire any public debt incurred by the public entity in the construction or acquisition of the facility in which the professional sports team plays its home games. After that debt is retired, funds distributed to the public entity may be spent only for maintenance or improvement of the facility.*

(f) *If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the owner shall return the special license plates to the department.*

(g) *In this section:*

(1) *"Public entity" includes a municipality, county, industrial development corporation, or special district that is authorized to plan, acquire, establish, develop, construct, or renovate a facility in which a professional sports team plays its home games.*

(2) *"Professional sports team" means a sports team that is a member or an affiliate of a member of the National Football League, National Basketball Association, or National Hockey League or a major league baseball team.*

SECTION 1.45. Subchapter H, Chapter 545, Transportation Code, is amended by adding Section 545.3535 to read as follows:

Sec. 545.3535. AUTHORITY OF TEXAS TRANSPORTATION COMMISSION TO ALTER SPEED LIMITS ON CERTAIN ROADS. (a) *The commissioners court of a county may request the Texas Transportation Commission to determine and declare a reasonable and safe prima facie speed limit that is lower than a speed limit established by Section 545.352 on any part of a farm-to-market or a ranch-to-market road of the highway system that is located in that county and has a pavement width of 20 feet or less.*

(b) *If the commission receives a request under Subsection (a), the commission shall publish in a newspaper of general circulation in the affected county notice of:*

(1) *the request of the commissioners court; and*

(2) *the time and place of a hearing in the county on the request.*

(c) *The commission may elect to determine and declare a lower speed limit on any part of the road without an engineering and traffic investigation, but the commission must use sound and generally accepted traffic engineering practices in determining and declaring the lower speed limit.*

(d) *The commission by rule shall establish standards for determining lower speed limits within a set range.*

SECTION 1.46. (a) Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0195 to read as follows:

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS; TEXAS DEPARTMENT OF TRANSPORTATION. (a) *This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.*

(b) *The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.*

(c) *If a court dismisses a condemnation proceeding on the motion of the department or as a result of the failure of the department to bring the proceeding properly, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.*

(b) *The changes in law made by this section apply only to dismissal of a condemnation proceeding for which a motion is made on or after the effective date of this section. Dismissal of a condemnation proceeding for which a motion is made before the effective date of this section is governed by the law in effect at the time the motion was made, and that law is continued in effect for that purpose.*

SECTION 1.47. The Texas Department of Transportation shall conduct a feasibility study to determine the need for construction of additional public rest areas with restrooms along the section of Interstate 35 between San Antonio and Laredo and report its findings to the legislature not later than January 1, 1999.

SECTION 1.48. (a) Notwithstanding any other law including Chapter 552, Government Code, the Texas Department of Transportation is prohibited from providing motor vehicle certificate of title information or motor vehicle registration personal information that consists of the name, address, or date of birth of an individual unless the person receiving the information agrees in writing with the department that the person will not disseminate or publish the information on the Internet or similar computer cyberspace network or bulletin board or permit another to disseminate or publish the information in that manner.

(b) A person having access to or in possession of the information provided under this section may not disseminate or publish this information on the Internet or similar computer cyberspace network or bulletin board. A person commits an offense if the person disseminates or distributes information in violation of this section.

(c) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement.

(d) As soon as practicable, the Texas Department of Transportation shall adopt emergency rules to implement this section.

(e) This section takes effect only if S.B. No. 1069, 75th Legislature, Regular Session, 1997, does not become law. If that legislation becomes law, this section has no effect.

SECTION 1.49. Subsection (e), Section 201.051, Transportation Code, is repealed.

SECTION 1.50. (a) As soon as practicable, the Texas Department of Transportation, using funds authorized by minute order 106860 passed by the Texas Transportation Commission on June 18, 1996, shall conduct a study to explore whether it is practical for the department to develop and carry out a statewide Type II Noise Abatement Program.

(b) Not later than the 10th day after the date on which the Texas Department of Transportation releases a report or the results of the study, the department shall provide notice of the study to each member of the legislature who represents a county that is covered by the study or that may be affected by the study.

(c) On request of a member of the legislature, the Texas Department of Transportation shall provide the member with a copy of the study.

ARTICLE 2. OUTDOOR ADVERTISING

SECTION 2.01. Section 391.065, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may not adopt a rule under this chapter that restricts competitive bidding or advertising by the holder of a license issued under this chapter other than a rule to prohibit false, misleading, or deceptive practices. The limitation provided by this section applies only to rules relating to the occupation of outdoor advertiser and does not affect the commission's power to regulate the orderly and effective display of outdoor advertising under this chapter. A rule to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of:

- (A) any legal medium for an advertisement;*
- (B) the license holder's advertisement under a trade name; or*
- (C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or*

(2) relate to the size or duration of an advertisement by the license holder.

SECTION 2.02. Section 391.062, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.

SECTION 2.03. Subsection (a), Section 391.066, Transportation Code, is amended to read as follows:

(a) The commission may revoke or suspend a license issued under this subchapter or place on probation a license holder whose license is suspended if the license holder violates this chapter or a rule adopted under this chapter. If the suspension of the license is probated, the department may require the license holder to report regularly to the commission on any matter that is the basis of the probation.

SECTION 2.04. Subchapter D, Chapter 391, Transportation Code, is amended by adding Sections 391.097 and 391.098 to read as follows:

Sec. 391.097. **MAJOR AGRICULTURAL INTEREST SIGN.** (a) In this section:

(1) "Eligible rural highway" means a highway that:

- (A) has noncontrolled access; and
- (B) is outside the corporate limits of a municipality.

(2) "Major agricultural interest" means a farm, ranch, winery, nursery, greenhouse, or other facility that:

- (A) sows or cultivates an agricultural product;
- (B) devotes a minimum of five acres of land to the production of the agricultural product;
- (C) markets the product on the premises as a retail sale of the product; and
- (D) conducts public tours of the grounds or facilities.

(b) The commission shall enter into one or more contracts with an individual, firm, group, or association in this state to erect and maintain major agricultural interest signs at appropriate locations along eligible rural highways.

(c) A contract under this section shall provide for:

- (1) the assessment of fees to be paid to a contractor by a commercial establishment of a major agricultural interest; and
- (2) remittance to the department of a portion of the fees collected by the contractor in an amount sufficient to recover the department's costs of administering the program.

(d) To be eligible to have its name displayed on a major agricultural interest sign, a major agricultural interest must be located within five miles of an intersection with an eligible rural highway.

(e) A major agricultural interest sign must:

- (1) have a brown background with a white reflective legend and border;
- (2) not contain a corporate or trademark symbol; and
- (3) not contain a message, symbol, or trademark that resembles an official traffic control device.

(f) The commission shall:

- (1) regulate the content, composition, placement, erection, and maintenance of major agricultural interest signs and supports on an eligible rural highway right-of-way; and
- (2) adopt rules necessary to administer and enforce this section.

Sec. 391.098. **VARIANCES.** (a) The commission shall authorize the director to grant variances, on a case-by-case basis, to the eligibility, location, or placement of specific logo signs, major agricultural interest signs, and major shopping area guide signs, including the highways along which a sign may be located. The commission may adopt rules prescribing conditions or guidelines the director should or must consider when determining whether to grant a variance.

(b) The director may grant a variance if the director determines that:

- (1) the variance would promote traffic safety;
- (2) the variance would improve traffic flow;
- (3) an overpass, highway sign, or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(4) the variance would satisfy other conditions or guidelines prescribed by commission rules authorizing the granting of variances.

(c) The director may not grant a variance to the requirements of this subchapter regarding supports, content, or composition of signs.

SECTION 2.05. Section 394.003, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter does not apply to a directional sign for a small business, as defined by Section 2006.001, Government Code, if the sign:

(1) is on private property; and

(2) has a surface area not larger than 50 square feet.

SECTION 2.06. Subsection (b), Section 394.021, Transportation Code, is amended to read as follows:

(b) Except as otherwise authorized by this chapter, the commission may not issue a permit for an off-premise sign unless the sign is to be located:

(1) within 800 feet of a ~~one or more~~ recognized commercial or industrial business activity or the office of a governmental entity ~~[activities]~~; and

(2) on the same side of the road as the business activity or the office of the governmental entity ~~[activities]~~.

ARTICLE 3. TEXAS MOTOR VEHICLE COMMISSION CODE

SECTION 3.01. Section 2.02A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02A. APPOINTMENTS. Appointments to the Commission shall be made *without* ~~[with due]~~ regard to ~~[for]~~ the race, color, disability, sex, religion, or ~~[ethnicity, gender, and]~~ national origin of the appointees.

SECTION 3.02. Subchapter B, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 2.03A to read as follows:

Sec. 2.03A. TRAINING ON DEPARTMENT AND CERTAIN LAWS RELATING TO DEPARTMENT. *(a) To be eligible to take office as a member of the Commission, a person appointed to the Commission must complete at least one course of a training program that complies with this section.*

(b) The training program must provide information to the person regarding:

(1) this Act;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the Commission or the Texas Ethics Commission.

(c) A person appointed to the Commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the Commission.

SECTION 3.03. Subsection (b), Section 2.08, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Commission is subject to *Chapters 551 and 2001, Government Code* [~~the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes)~~].

SECTION 3.04. Subsection (c), Section 2.08A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(c) If the Executive Director has knowledge that a potential ground for removal exists, the Executive Director shall notify the Chairman of the Commission of the ground. The Chairman shall then notify the Governor *and the Attorney General* that a potential ground for removal exists. *If the potential ground for removal relates to the Chairman of the Commission, the Executive Director shall notify the Vice-chairman of the Commission, who shall notify the Governor and the Attorney General that a potential ground for removal exists.*

SECTION 3.05. Subsection (e), Section 2.09, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The Executive Director shall appoint and employ such Commission staff as are necessary to carry out the duties and functions of the Executive Director and the Commission under this Act. The Commission shall develop and implement policies that clearly *separate the policy-making* [~~define the respective~~] responsibilities of the Commission and the *management responsibilities of the Executive Director* and staff of the Commission.

SECTION 3.06. Subsection (b), Section 2.10, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Commission shall file annually with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Commission during the preceding fiscal year. The annual report must *comply with each reporting requirement applicable to financial reporting* [~~be in the form and reported in the time~~] provided by the General Appropriations Act.

SECTION 3.07. Section 2.12, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.12. COMPLAINTS. (a) The Commission shall:

(1) keep an information file about each complaint filed with the Commission that the Commission has authority to resolve; *and*

(2) *provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the Commission's policies and procedures relating to complaint investigation and resolution.*

(b) If a written complaint is filed with the Commission that the Commission has authority to resolve, the Commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing Commission investigation.

(c) *With regard to each complaint filed with the Commission, the Commission shall keep the following information:*

(1) *the date the complaint is filed;*

(2) *the name of the person filing the complaint;*

(3) *the subject matter of the complaint;*

(4) *a record of each person contacted in relation to the complaint;*

(5) *a summary of the results of the review or investigation of the complaint; and*

(6) *if the Commission takes no action on the complaint, an explanation of the reasons that no action was taken.*

SECTION 3.08. Subsections (a), (b), and (d), Section 2.13, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Executive Director or his designee shall develop an intraagency career ladder program *that addresses opportunities for mobility and advancement of employees in the*

Commission. The program shall require intraagency postings of all [~~nonentry-level~~] positions concurrently with any public posting.

(b) The Executive Director or his designee shall develop a system of annual performance evaluations *that are based on documented employee performance.* All merit pay for Commission employees must be based on the system established under this subsection.

(d) The Executive Director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, *disability* [~~handicap~~], sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel *that comply with Chapter 21, Labor Code*;

(2) a comprehensive analysis of the Commission work force that meets federal and state laws, rules, and regulations *and instructions directly adopted under those laws, rules, or regulations* [~~guidelines~~];

(3) procedures by which a determination can be made of significant underuse in the Commission work force of all persons for whom federal or state laws, rules, and regulations *and instructions directly adopted under those laws, rules, or regulations*, [~~guidelines~~] encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

A policy statement prepared under this subsection must cover an annual period, be updated at least annually, *be reviewed by the Texas Commission on Human Rights for compliance with Subdivision (1) of this subsection*, and be filed with the Governor's office.

The Governor's office shall deliver a biennial report to the legislature based on the information received under this subsection. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 3.09. Section 3.05, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.05. INVESTIGATION; ENFORCEMENT. (a) Whenever the Board [~~Commission~~] has reason to believe, through receipt of a complaint or otherwise, that a violation of this Act or a Board [~~Commission~~] rule, order, or decision has occurred or is likely to occur, the Board [~~Commission~~] shall conduct an investigation unless it determines that a complaint is frivolous or for the purpose of harassment. If the Board's [~~Commission's~~] investigation establishes that a violation of this Act or a Board [~~Commission~~] rule, order, or decision has occurred or is likely to occur, the Board [~~Commission~~] shall institute proceedings as it deems appropriate to enforce this Act or its rules, orders, and decisions.

(b) *Notwithstanding Subsection (a) of this section, another provision of this Act, or Board rule, the Board may not file a complaint alleging a violation of this Act or a Board rule relating to advertising until the Board has notified the licensee involved of the alleged violation and given the licensee an opportunity to cure the violation without further proceedings or liability.*

SECTION 3.10. Section 4.01B, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01B. [~~NOTICE OF~~] LICENSE EXPIRATION. (a) *The Commission by rule may implement a system under which licenses expire on various dates during the year.*

(b) The Commission shall notify each person licensed under this Act of the date of license expiration and the amount of the fee required for license renewal. The notice shall be mailed at least thirty days before the date of license expiration.

(c) *For a year in which a license expiration date is changed, the fee for the license shall be prorated so that the holder of the license pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire license renewal fee is payable.*

ARTICLE 4. MOTOR CARRIERS

SECTION 4.01. Subsection (i), Section 3, Article 6675c, Revised Statutes, is amended to read as follows:

(i) A registration issued under this article is valid for one year. The department may adopt a system under which registrations expire at different times during the year. *At least 30 days before the date on which a motor carrier's registration expires, the department shall notify the carrier of the impending expiration. The notice must be in writing and sent to the motor carrier's last known address according to the records of the department.* A motor carrier may renew a registration under this article by:

- (1) supplementing the application with any new information required under Subsection (g) of this section;
- (2) paying a \$10 fee for each vehicle requiring registration the carrier operates; and
- (3) showing the department evidence of continuing insurance or financial responsibility in an amount at least equal to the amount set by the department under Section 4(a) of this article.

SECTION 4.02. Section 7, Article 6675c, Revised Statutes, is amended to read as follows:

Sec. 7. SUSPENSION AND REVOCATION OF REGISTRATION. (a) The department may suspend or revoke a registration issued under this article *or place on probation a motor carrier whose registration is suspended if:*

- (1) a motor carrier falls to maintain insurance *or proof of financial responsibility* as required by Section 4(a) or (b) *or Section 8(c)(5)* of this article;
- (2) a motor carrier fails to keep proof of insurance in the cab of each vehicle as required by Section 4(e) of this article;
- (3) a motor carrier fails to register a vehicle requiring registration; or
- (4) a motor carrier knowingly provides false information on any form filed with the department under this section.

(b) The Department of Public Safety may request that the department suspend or revoke a registration issued under this article *or place on probation a motor carrier whose registration is suspended if* a motor carrier:

- (1) has an unsatisfactory safety rating under 49 C.F.R. Part 385; or
 - (2) has multiple violations of a provision of Article 6675d, Revised Statutes, a rule adopted under that article, or the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).
- (c) Except as provided by Subsection (d) of this section, a suspension or revocation *or the imposition of probation* made under Subsection (a) or (b) of this section is a contested case under Chapter 2001, Government Code.

(d) The department may suspend or revoke a registration issued under this article *or place on probation a motor carrier whose registration is suspended* without a hearing under Chapter 2001, Government Code, if:

- (1) the department provides notice to the motor carrier of:
 - (A) the proposed suspension or revocation; and
 - (B) the right of the carrier to request a hearing under Chapter 2001, Government Code; and
- (2) the motor carrier fails to provide the department with a written request for a hearing within 10 days after the date the carrier receives the notice described in Subdivision (1) of this subsection.

(e) *If the suspension of a motor carrier's registration is probated, the department may require the carrier to report regularly to the department on any matter that is the basis of the probation.*

SECTION 4.03. Section 8, Article 6675c, Revised Statutes, is amended by adding Subsection (h) to read as follows:

(h) *The department may not by rule restrict competitive bidding or advertising by a motor carrier except to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:*

(1) *restrict the use of:*

- (A) *any medium for an advertisement;*
- (B) *the motor carrier's advertisement under a trade name; or*
- (C) *the motor carrier's personal appearance or voice in an advertisement, if the motor carrier is an individual; or*

(2) *relate to the size or duration of an advertisement by the motor carrier.*

SECTION 4.04. Subsections (a) and (e), Section 3, Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier may not operate a commercial motor vehicle, as defined by Section 548.001, *Transportation Code*, [~~140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes),~~] or a tow truck on a road or highway of this state unless the carrier registers with the department under this article.

(e) The department shall issue a certificate containing a single registration number to a motor carrier, regardless of the number of vehicles requiring registration the carrier operates. The department shall issue a cab card as described by Section 5 of this article for each vehicle requiring registration the motor carrier operates. *To avoid multiple registrations of a single motor carrier, the department shall adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under this article.*

SECTION 4.05. Subsections (a), (b), and (d), Section 4, Article 6675c, Revised Statutes, are amended to read as follows:

(a) A motor carrier that is required to register under *Section 3* of this article shall maintain liability insurance in an amount set by the department for each vehicle requiring registration the carrier operates. The department by rule may set the amount of liability insurance required at an amount that does not exceed the amount required for a motor carrier under federal regulations adopted under 49 U.S.C. Section 10927(a)(1). In setting the amount the department shall consider:

- (1) the class and size of the vehicle; and
- (2) the type of persons or cargo being transported.

(b) A motor carrier required to register under *Section 3* of this article transporting household goods shall maintain cargo insurance in the same amount required for a motor carrier transporting household goods under federal law.

(d) A motor carrier that is required to register under *Section 3* of this article must file with the department proof of insurance in the amounts required by Subsections (a) and (b) of this section, or proof of financial responsibility as described by Subsection (c) of this section, in a form prescribed by the department. The form must be filed:

- (1) at the time of the initial registration;
- (2) at the time of a subsequent registration, if the motor carrier was required to be continuously registered under this article and the carrier failed to maintain continuous registration;
- (3) at the time a motor carrier changes insurers; and
- (4) at the time a motor carrier changes ownership, as determined by rules adopted by the department.

SECTION 4.06. Section 8, Article 6675c, Revised Statutes, is amended by amending Subsections (c) and (f) and adding Subsection (g) to read as follows:

(c) The department shall adopt rules to protect consumers who use the services of a motor carrier [~~who is required to register under Section 3 of this article and~~] who is transporting household goods ~~for compensation [that are at least as stringent as the corresponding provisions of 49 C.F.R. Part 1056. The department may adopt rules under this subsection that are more stringent than the corresponding federal provisions. A motor carrier trans-~~

~~porting household goods shall list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state~~. The department may adopt all such rules as are necessary to ensure that customers of household goods movers are protected from deceptive or unfair practices and unreasonably hazardous activities on the part of the movers. Such rules ~~shall~~ *may* include but are not limited to measures to:

(1) establish a formal process for resolving disputes over fees and damages ~~[apart from the method of mediation in Subsection (f) of this section];~~

(2) require a carrier to indicate clearly to consumers whether estimates are binding or nonbinding and disclose the maximum price a consumer could be required to pay; ~~[and]~~

(3) create a centralized process for making complaints about a carrier which also allows consumers to inquire about a carrier's complaint record;

(4) ~~require a motor carrier transporting household goods to list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state;~~

(5) ~~require motor carriers who are required to register under this section to file proof of cargo insurance in amounts to be determined by the department that do not exceed the amount required for a motor carrier transporting household goods under federal law and shall allow alternative proof of financial responsibility, through surety bonds, letters of credit, or other means satisfactory to the department, for contractual obligations to customers that do not exceed \$5,000 aggregate loss or damage to total cargo shipped at any one time;~~

(6) ~~require motor carriers who are required to register under this section to conspicuously advise consumers concerning limitation of any carrier liability for loss or damage as determined under Subdivision (7) of this subsection; and~~

(7) ~~determine reasonable provisions governing limitation of liability for loss or damage of motor carriers required to register under this section, not to exceed 60 cents per pound per article.~~

(f) ~~The department shall appoint a rules advisory committee consisting of representatives of motor carriers transporting household goods using small, medium, and large equipment, the public, and the department. Members of the committee serve at the pleasure of the department and are not entitled to compensation or reimbursement of expenses for serving on the committee. The department may adopt rules to govern the operations of the advisory committee. The committee shall:~~

(1) ~~examine the rules adopted by the department under Subsection (c) of this section and make recommendations to the department on modernizing and streamlining the rules;~~

(2) ~~conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under this section; and~~

(3) ~~pursuant to Subsection (c)(7) of this section, recommend a maximum level of liability limitation that does not exceed 60 cents per pound. [All collective associations of motor carriers transporting household goods, or agents thereof, which have received approval for collective ratemaking agreements under Section 9(d) of this article shall provide a method of mediation for consumers to receive resolution through mediation of disputes over fees, damages, and services. All costs associated with such mediation shall be borne by the motor carriers, the agents thereof, or the association. All carriers and agents who are parties to collective agreements approved under Section 9(d) of this article must participate in consumer complaint resolution, including participation in the mediation process and advertisement of the availability of mediation in all contracts or estimate proposals. Any complaint mediation that is not resolved to the mutual agreement of all parties shall be reported to the department. Consumers shall be advised of their rights to seek resolution directly from the department. The department shall adopt rules that ensure such notification is available to consumers in a form and manner consistent with its duties under Subsection (e) of this section.]~~

(g) *The department shall require motor carriers who are not required to register under Section 3 of this article to register their operations before transporting household goods for compensation. The department shall determine the forms and procedures for such registration. The department shall charge a motor carrier who registers under this subsection a fee that does not exceed the total of the fees imposed by Section 3 of this article.*

SECTION 4.07. Section 10, Article 6675c, Revised Statutes, is amended to read as follows:

Sec. 10. CRIMINAL PENALTY. (a) A person commits an offense if the person fails to:

- (1) register as required by Section 3 or 8 of this article;
- (2) maintain insurance or proof of financial responsibility as required by Section 4 or 8 of this article; or
- (3) keep a cab card in the cab of a vehicle as required by Section 5(a) of this article.

(b) *A person commits an offense if the person solicits the transportation of household goods for compensation without being registered as required by Section 3 or 8 of this article.*

(c) An offense under this section is a Class C misdemeanor.

SECTION 4.08. Subdivision (1), Section 1, Article 6675d, Revised Statutes, is amended to read as follows:

(1) "Commercial motor vehicle" means a motor vehicle described by Section 548.001(1), Transportation Code ~~[has the meaning assigned by Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)]~~.

SECTION 4.09. Section 5, Article 6675d, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) *A rule adopted by the director under this article relating to hours of service, an operator's record of duty status, or an operator's daily log, for operations outside a 150-mile radius of the normal work-reporting location, also applies to and must be complied with by a motor carrier, as defined by Section 1, Article 6675c, Revised Statutes, of household goods not using a commercial motor vehicle, as defined by Section 548.001, Transportation Code.*

SECTION 4.10. The study required by Subdivision (2), Subsection (f), Section 8, Article 6675c, Revised Statutes, as added by Section 4.06 of this article, must be completed not later than July 1, 1998, and any resulting rules shall be made to take effect January 1, 1999.

SECTION 4.11. (a) Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6675c-2 to read as follows:

Art. 6675c-2. FOREIGN COMMERCIAL MOTOR TRANSPORTATION

Sec. 1. DEFINITIONS. In this article:

- (1) "Border" means the border between this state and the United Mexican States.
- (2) "Commercial motor vehicle" includes a foreign commercial motor vehicle.
- (3) "Border commercial zone" means a commercial zone established under 49 C.F.R. Part 372, Subpart B, any portion of which is contiguous to the border in this state.
- (4) "Foreign commercial motor vehicle" means a commercial motor vehicle, as defined by 49 C.F.R. Section 390.5, that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.
- (5) "Motor carrier" includes a foreign motor carrier and a foreign motor private carrier, as defined in 49 U.S.C. Sections 13102(6) and (7).

Sec. 2. RULES. In addition to rules required by this article, the Texas Department of Transportation, the Department of Public Safety, and the Texas Department of Insurance may adopt other rules to carry out this article.

Sec. 3. REFERENCE TO FEDERAL STATUTE OR REGULATION. A reference in this article to a federal statute or regulation includes any subsequent amendment or redesignation of the statute or regulation.

Sec. 4. BORDER COMMERCIAL ZONE EXCLUSIVE; BOUNDARIES. (a) A law or agreement of less than statewide application that is adopted by an agency or political subdivision of this state and that regulates motor carriers or commercial motor vehicles or the operation of those carriers or vehicles in the transportation of cargo across the border or

within an area adjacent to the border by foreign commercial motor vehicles has no effect unless the law or agreement applies uniformly to an entire border commercial zone and only in a border commercial zone. This section supersedes that portion of any paired city, paired state, or similar understanding governing foreign commercial motor vehicles or motor carriers entered into under Section 502.054, Transportation Code, or any other law.

(b) The boundaries of a border commercial zone may be modified or established only as provided by federal law.

Sec. 5. REGISTRATION EXEMPTION IN BORDER COMMERCIAL ZONE. (a) A foreign commercial motor vehicle is exempt from Chapter 502, Transportation Code, and any other law of this state requiring the vehicle to be registered in this state, including a law providing for a temporary registration permit, if:

(1) the vehicle is engaged solely in transportation of cargo across the border into or from a border commercial zone;

(2) for each load of cargo transported the vehicle remains in this state:

(A) not more than 24 hours; or

(B) not more than 48 hours, if:

(i) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(ii) all financial responsibility requirements applying to the vehicle are satisfied;

(3) the vehicle is registered and licensed as required by the law of another state or country as evidenced by a valid metal license plate attached to the front or rear of the exterior of the vehicle; and

(4) the country in which the person that owns or controls the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned or controlled by residents of this state.

(b) A foreign commercial motor vehicle operating under the exemption provided by this section and the vehicle's driver may be considered unregistered if the vehicle is operated in this state outside a border commercial zone or in violation of United States law.

Sec. 6. FINANCIAL RESPONSIBILITY. The Texas Department of Transportation shall adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in this state to maintain financial responsibility. This article prevails over any other requirement of state law relating to financial responsibility for operation of those vehicles in this state.

Sec. 7. DOMESTIC TRANSPORTATION. A foreign motor carrier or foreign motor private carrier may not transport persons or cargo in intrastate commerce in this state unless the carrier is authorized to conduct operations in interstate and foreign commerce domestically between points in the United States under federal law or international agreement.

(b) Article 6675d, Revised Statutes, is amended by adding Section 16 to read as follows:

Sec. 16. APPLICATION TO FOREIGN COMMERCIAL MOTOR VEHICLES. Except as otherwise provided by law, this article also applies to all foreign commercial motor vehicles, as defined by Section 1, Article 6675c-2, Revised Statutes.

SECTION 4.12. (a) Section 642.001, Transportation Code, is amended by adding Subdivision (6) to read as follows:

(6) "Tow truck" has the meaning assigned that term by Section 643.001.

(b) Section 642.002, Transportation Code, is amended to read as follows:

Sec. 642.002. IDENTIFYING MARKINGS ON CERTAIN VEHICLES REQUIRED; OFFENSE; PENALTY. (a) A person commits an offense if:

(1) the person operates on a public street, road, or highway:

(A) a commercial motor vehicle that has three or more axles;

(B) a truck-tractor; ~~or~~

(C) a road-tractor; or

- (D) a tow truck; and
- (2) the vehicle does not have on each side of the power unit identifying markings that:
 - (A) show the name and address, including city and state, of the owner or operator of the vehicle; [and]
 - (B) have clearly legible letters and numbers of a height of at least two inches; and
 - (C) show the motor carrier registration number in clearly legible letters and numbers, if the vehicle is required to be registered under this chapter.
- (b) The owner of a vehicle commits an offense if the owner or operator permits another to operate a vehicle in violation of Subsection (a).
- (c) The Texas Department of Transportation by rule may prescribe additional requirements regarding the form of the markings required by Subsection (a)(2) that are not inconsistent with that subsection.
- (d) An offense under this section is a Class C misdemeanor.

ARTICLE 5. SALVAGE VEHICLE DEALERS

SECTION 5.01. Section 1.02, Article 6687-1a, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) The commission may not adopt a rule under this article that restricts competitive bidding or advertising by a person who holds a license issued under this article other than a rule to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:

- (1) restrict the use of:
 - (A) any medium for an advertisement;
 - (B) the license holder's advertisement under a trade name; or
 - (C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or
- (2) relate to the size or duration of an advertisement by the license holder.

SECTION 5.02. Section 2.07, Article 6687-1a, Revised Statutes, is amended to read as follows:

Sec. 2.07. LICENSE RENEWAL. (a) A license issued under this article expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in the activities that require a license until the license has been renewed under the provisions of this section.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department one and one-half times the required renewal fee.

(d) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the department two times the required renewal fee.

(e) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. If the person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the department a fee that is equal to two times the required renewal fee for the license.

(f) At least 30 days before the date on which a person's license expires, the department shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the department. ~~If a license holder fails to renew the license before its expiration date, the license holder may renew the license on payment of the renewal fee and a late fee set by the commission. If the license is~~

~~not renewed before the first anniversary of the date on which the license expired, the license holder must apply for a new license in the same manner as an applicant for an initial license.]~~

SECTION 5.03. Subsection (b), Section 4.01, Article 6687-1a, Revised Statutes, is amended to read as follows:

(b) The commission shall adopt rules establishing the grounds for the denial, suspension, revocation, or reinstatement of a license and establishing procedures for disciplinary actions. *A rule adopted under this subsection may not conflict with a rule adopted by the State Office of Administrative Hearings.*

ARTICLE 6. VEHICLE STORAGE FACILITY ACT

SECTION 6.01. Section 4, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsection (d) to read as follows:

(d) *The commission may not adopt a rule under this Act that restricts competitive bidding or advertising by a person who holds a license issued under this Act other than a rule to prohibit false, misleading, or deceptive practices. A rule to prohibit false, misleading, or deceptive practices may not:*

(1) *restrict the use of:*

(A) *any medium for an advertisement;*

(B) *the license holder's advertisement under a trade name; or*

(C) *the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or*

(2) *relate to the size or duration of an advertisement by the license holder.*

SECTION 6.02. Subsection (a), Section 9, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(a) *A license issued under this article is valid for the period set by the commission. At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.*

SECTION 6.03. Section 10, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by adding Subsections (e) and (f) to read as follows:

(e) *If the commission places a person on probation under this section, the commission may require the person to report regularly to the commission on any matter that is the basis of the probation.*

(f) *If the commission proposes to take an action under Subsection (a) or (b) of this section, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.*

ARTICLE 7. TURNPIKES

SECTION 7.01. Chapter 222, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TOLL FACILITIES

Sec. 222.101. **EXPENDITURE OF MONEY.** *The department may spend money from any source for the construction, maintenance, and operation of toll facilities.*

Sec. 222.102. **TEMPORARY TOLL PROJECTS.** *The department may recover the cost of a preventative maintenance or rehabilitation project on a nontoll segment of the state highway system by temporarily imposing a toll charge after notice and a public hearing.*

Sec. 222.103. **COST PARTICIPATION.** (a) *The department may participate in the cost of the construction, maintenance, or operation of a toll facility of a public or private entity*

on terms and conditions established by the commission, including requirements for repayment.

(b) *An entity receiving cost participation from the department under this section is a successor agency to the Texas Turnpike Authority for the purposes of Section 52-b, Article III, Texas Constitution.*

(c) *On the request of a member of the legislature, the department shall provide the member a status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds.*

(d) *On the request of a member of the legislature, not later than the 90th day before the date a loan is granted by the department for a project under this section, the department shall notify each member of the legislature that represents any part of the area affected by the project of the status of the project and how any other project in any other district would be affected.*

SECTION 7.02. Section 362.055, Transportation Code, is amended to read as follows:

Sec. 362.055. EXCEPTION. This subchapter does not apply to:

- (1) a county that has a population of more than 1.5 million; ~~or~~
- (2) a local government corporation created under Chapter 431 by a county that has a population of more than 1.5 million; or
- (3) a regional tollway authority created under Chapter 366.

SECTION 7.03. Section 361.001, Transportation Code, is amended to read as follows:

Sec. 361.001. DEFINITIONS. In this chapter:

(1) "Authority" means the Texas Turnpike Authority *division of the Texas Department of Transportation* ~~[and includes the entity that succeeds to the principal functions of the authority or to whom by law the powers of the authority are given].~~

(2) "Board" means the board of directors of the authority.

(3) ~~["Highway" means a road, highway, farm to market road, or street under the supervision of the state or a political subdivision of the state.~~

[4] "Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.

(4) ~~(5)~~ "Turnpike project" means a toll ~~[an express]~~ highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

- (A) a facility to relieve traffic congestion and promote safety;
- (B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, or service station;
- (C) an administration, storage, or other building the authority considers necessary to operate the project; and
- (D) property rights, easements, and interests the authority acquires to construct or operate the project.

(5) "Regional tollway authority" means a regional tollway authority created under Chapter 366.

SECTION 7.04. Section 361.031, Transportation Code, is amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation that has full authority to exercise all powers granted to it under this chapter. Powers granted to the department under this chapter and Chapter 362 to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through the authority ~~[state agency]~~.

(b) The authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for:

- (1) right-of-way acquisition;
- (2) roadway finance, design, and construction;
- (3) environmental affairs; or
- (4) legal services.

(c) With the approval of the commission, the authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for roadway maintenance, toll revenue collection, or traffic operations.

(d) To perform its functions under this chapter, the authority may use the facilities and personnel of the department in the same manner as other divisions of the department.

(e) If the comptroller assigns numbers to state agencies for accounting purposes, the comptroller shall assign a separate agency number to the authority [~~The authority shall locate offices in Austin, Texas, on or before September 1, 1997.~~].

(f) [(e)] The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

(g) The commission shall employ a director of the authority who serves as the authority's chief administrative officer. The director serves at the pleasure of the commission.

SECTION 7.05. Subsection (a), Section 361.032, Transportation Code, is amended to read as follows:

(a) The board is composed of ~~seven~~ [12] directors. The governor, with the advice and consent of the senate, shall appoint ~~six~~ [nine] directors who represent the public. The chair of the [Each] commission or a member of the commission designated by the chair serves as an ex officio board member.

SECTION 7.06. Subsection (a), Section 361.033, Transportation Code, is amended to read as follows:

(a) A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the ~~commission, department, or~~ authority or receiving funds from the ~~commission, department, or~~ authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the ~~commission, department, or~~ authority [~~other than compensation for acquisition of turnpike right-of-way~~]; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the ~~commission, department, or~~ authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses or compensation for acquisition of turnpike right-of-way.

SECTION 7.07. Subchapter B, Chapter 361, Transportation Code, is amended by adding Section 361.0335 to read as follows:

Sec. 361.0335. TRAINING FOR BOARD MEMBERS. (a) To be eligible to take office as a member of the board, a person appointed to the board must complete at least one course of a training program that complies with this section.

(b) A training program must provide information to the person regarding:

- (1) this chapter;
- (2) the programs operated by the board;

- (3) *the role and functions of the board;*
 - (4) *the rules of the board;*
 - (5) *the current budget for the board;*
 - (6) *the results of the most recent formal audit of the board;*
 - (7) *the requirements of the:*
 - (A) *open meetings law, Chapter 551, Government Code;*
 - (B) *open records law, Chapter 552, Government Code; and*
 - (C) *administrative procedure law, Chapter 2001, Government Code;*
 - (8) *the requirements of the conflict of interest laws and other laws relating to public officials; and*
 - (9) *any applicable ethics policies adopted by the board or the Texas Ethics Commission.*
- (c) *A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the board.*

SECTION 7.08. Section 361.042, Transportation Code, is amended to read as follows:

Sec. 361.042. GENERAL POWERS AND DUTIES. (a) The board ~~[authority]~~ shall:

- (1) *on its own initiative or at the request of the commission, consider, study, plan, and develop turnpike projects under this chapter;*
- (2) *adopt rules [bylaws] for the regulation of its affairs and the conduct of its business; and*
- (3) *undertake such other duties as are delegated to it by the commission.*

(b) *The authority may:*

- (1) ~~[(2)] adopt an official seal;~~
- ~~[(3)]~~ *construct, maintain, repair, and operate turnpike projects in this state;*
- (2) ~~[(4)]~~ *acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;*
- (3) *with the approval of the governor and the commission, [(5)] enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;*
- (4) ~~[(6)]~~ *enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;*
- (5) ~~[(7)]~~ *employ consulting engineers, [attorneys,] accountants, construction and financial experts, superintendents, managers, and other employees and agents the authority considers necessary and set their compensation;*
- (6) *employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;*
- (7) ~~[(8)]~~ *receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;*
- (8) ~~[(9)]~~ *adopt and enforce rules, if the commission concurs, not inconsistent with this chapter for the use of any turnpike project; and*
- (9) ~~[(10)]~~ *do all things necessary or appropriate to carry out the powers expressly granted by this chapter.*

SECTION 7.09. Section 361.055, Transportation Code, is amended to read as follows:

Sec. 361.055. SUCCESSOR AGENCY TO AUTHORITY. The following are *considered* successor agencies to the Texas Turnpike Authority ~~[authority]~~ for purposes of Section 52-b, Article III, Texas Constitution:

- (1) *a county, municipality, or local government corporation that leases, buys, operates, or otherwise receives a turnpike project under Subchapter H;*

(2) a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project;

(3) a local government corporation serving a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project; ~~and~~

(4) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million that constructs a toll road, toll bridge, or turnpike project;

(5) *the department;*

(6) *a public entity authorized to receive funds from the department for the construction, maintenance, or operation of toll projects; and*

(7) *a private entity authorized to receive funds from the department for the construction, maintenance, or operation of toll projects if the department determines that the use of the private entity fills a demonstrated public need.*

SECTION 7.10. Section 361.132, Transportation Code, is amended to read as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) The ~~board~~ ~~[authority]~~ may acquire, in the name of the state, ~~[authority]~~ public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(b) The real property the authority may acquire under this subchapter includes:

(1) public parks, playgrounds, or reservations;

(2) parts of or rights in public parks, playgrounds, or reservations;

(3) rights-of-way;

(4) property rights, including:

(A) *a right of ingress or egress; and*

(B) *a reservation right in real property that restricts or prohibits for not more than seven years the:*

(i) *addition of a new improvement on the real property;*

(ii) *addition to or modification of an existing improvement on the real property;*

or

(iii) *subdivision of the real property;*

(5) franchises;

(6) easements; and

(7) other interests in real property.

(c) The ~~board~~ ~~[authority]~~ may acquire the real property by any method, including purchase and condemnation. The ~~board~~ ~~[authority]~~ may purchase public or private real property on the terms and at the price the ~~board~~ ~~[authority]~~ and the owner consider reasonable.

(d) *Property necessary or convenient for the construction or operation of a turnpike project under Subsection (a) includes an interest in real property, a property right, or materials that the authority determines are necessary or convenient to:*

(1) *protect a turnpike project;*

(2) *drain a turnpike project;*

(3) *divert a stream, river, or other watercourse from the right-of-way of a turnpike project;*

(4) *store materials or equipment used in the construction or maintenance of a turnpike project;*

(5) *construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a turnpike project;*

(6) *lay out, construct, or maintain a roadside park;*

(7) *lay out, construct, or maintain a parking lot that will contribute to the maximum use of a turnpike project with the least possible congestion;*

(8) mitigate an adverse environmental effect that directly results from the construction or maintenance of a turnpike project; or

(9) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a turnpike project.

(e) The authority shall comply with all relocation assistance procedures applicable to the department in connection with any displacement of owners or tenants as a consequence of the authority's acquisition of real property under this chapter.

(f) The authority may acquire timber, earth, stone, gravel, or other materials as necessary to carry out a purpose under this chapter.

SECTION 7.11. Section 361.135, Transportation Code, is amended to read as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) The board, with the concurrence of the commission, [authority] may acquire public or private real property in the name of the state [authority] by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

- (1) the authority and the owner cannot agree on a reasonable price for the property; or
- (2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) ~~The board, with the concurrence of the commission, [To the extent provided by Subsection (e), the authority]~~ may condemn real property that the authority determines is:

- (1) necessary or appropriate to construct or to efficiently operate a turnpike project;
- (2) necessary to restore public or private property damaged or destroyed; ~~or~~
- (3) ~~necessary for access, approach, and interchange roads; or~~
- (4) necessary otherwise to carry out this chapter.

(c) ~~[The authority may condemn real property necessary for access, approach, and interchange roads but may not condemn property;~~

~~[(1) that is unnecessary for road and right-of-way purposes; or~~

~~[(2) that is for a supplemental facility for another purpose.~~

~~[(d)]~~ The authority may construct a supplemental facility only on real property the authority purchases.

(d) ~~[(e)]~~ The court having jurisdiction of a condemnation proceeding may:

- (1) make orders as are just to the authority and the owners of the real property; and
- (2) require an undertaking or other security to secure the owners against any loss or damage by reason of the board's [authority's] failure to accept and pay for the real property.

(e) ~~[(f)]~~ An undertaking or security under Subsection (d)(2) ~~[(e)(2)]~~ or an act or obligation of the authority or the board does not impose any liability on the state, ~~or~~ the authority, or the board except liability that may be paid from the money authorized by this chapter.

SECTION 7.12. Section 361.136, Transportation Code, is amended to read as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) If a turnpike project severs an owner's real property, the authority shall pay:

- (1) the value of the property acquired; and
- (2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) ~~[The authority shall provide and maintain without charge a passageway over or under the turnpike project for the owner of the severed real property and the owner's employees and representatives. The authority is not required to furnish a passageway if the owner waives the requirement or the original tract involved is less than 80 acres.~~

~~[(c)]~~ The authority may negotiate for and purchase the severed real property or either part of the severed real property if the authority and the owner agree on terms for the purchase. ~~[The authority shall sell and dispose of severed real property within two years after the date of acquisition.]~~

SECTION 7.13. Subchapter D, Chapter 361, Transportation Code, is amended by adding Section 361.142 to read as follows:

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the authority are not binding against the authority and do not impair the authority's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the authority from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION 7.14. Section 361.180, Transportation Code, is amended to read as follows:

Sec. 361.180. TOLLS ON CONVERTED HIGHWAYS ~~[PROHIBITION ON TOLLS ON EXISTING FREE HIGHWAYS]~~. If converted to a toll facility under Section 222.102 or 362.0041, the commission ~~[The authority]~~ may impose a toll for transit over an existing free public highway ~~[only if such highway is transferred to the authority by the commission under Section 362.0041]~~.

SECTION 7.15. Subsection (b), Section 361.184, Transportation Code, is amended to read as follows:

(b) The board ~~[authority]~~ may transfer, or direct the authority to transfer, into the project revolving fund money from any permissible source, including:

- (1) money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project;
- (2) money received under Subchapter I or from a transfer of a turnpike project under Subchapter H;
- (3) advances from the state highway fund if the advances are repaid as required by ~~[department authorized under]~~ Section 52-b, Article III, Texas Constitution; and
- (4) contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

SECTION 7.16. Section 361.189, Transportation Code, is amended to read as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. ~~[(a)]~~ The commission ~~[board]~~ by resolution may authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project, other than a project financed under Subchapter I, or a toll-free project. The commission ~~[board]~~ may in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that:

- ~~[(1) violates Subsection (b); or~~
 - ~~[(2)]~~ violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the surplus revenue.
- ~~[(b) Except as provided by Subsection (c), the surplus revenue of a turnpike project that was under construction or operated by the authority on January 1, 1993, may be used only for:~~
- ~~[(1) the costs associated with the construction, expansion, or maintenance of the project producing the revenue; and~~
 - ~~[(2) transfers to the Texas Turnpike Authority feasibility study fund.~~
- ~~[(c) The board may use revenue from a turnpike project described by Subsection (b) for a purpose authorized by this chapter other than a purpose described by that subsection if:~~
- ~~[(1) the authority obtains the permission of the commissioners court of each county in which the project is located; or~~
 - ~~[(2) an agreement between the authority and a county or local government corporation created by the county for the lease, sale, or other conveyance of the project permits the revenue to be used for another purpose.]~~

SECTION 7.17. Section 361.232, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to the conversion of any highway that is a part of the state highway system to a turnpike project.

SECTION 7.18. Section 361.237, Transportation Code, is amended to read as follows:

Sec. 361.237. OPERATION OF TURNPIKE PROJECT. *A turnpike project is a public road subject to all laws applicable to the regulation and control of traffic. ~~[(a) The authority shall police and operate a turnpike project through a force of police, toll takers, and other employees of the authority.~~*

~~[(b) The authority may arrange with the Department of Public Safety for the services of officers of that agency.]~~

SECTION 7.19. Section 361.238, Transportation Code, is amended to read as follows:

Sec. 361.238. PAYMENT OF BOND INDEBTEDNESS; CESSATION OR CONTINUATION OF TOLLS~~[- TRANSFER OF PROJECT TO COMMISSION]~~. (a) *Except as provided by Subsection (b), a [A] turnpike project ~~[that is in good condition and repair to the satisfaction of the commission]~~ becomes a toll-free ~~[part of the state] highway [system]~~ when:*

(1) the bonds issued under this chapter for the project and the interest on the bonds are paid; or

(2) firm banking and financial arrangements have been made for the discharge and final payment or redemption of the bonds in accordance with Section 7A, Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes) ~~[a sufficient amount to pay the bonds and the interest on the bonds to maturity or to redeem the bonds has been set aside in trust for the benefit of the bondholders].~~

(b) If the conditions of Subsections (a)(1) and (2) are met, the commission may continue to charge a toll sufficient to pay the costs of maintaining the facility. ~~[The authority shall continue to operate as a toll facility a turnpike project that the commission determines is not in a state of repair so as to justify its acceptance as part of the state highway system. The authority shall continue the tolls then in effect or revise the tolls to provide money sufficient to assure payment of the expenses of maintenance and operation and the making of repairs and replacements as necessary to meet the minimum requirements of the commission within the shortest practicable time.]~~

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the authority;

(2) an entity to which a project authorized by this chapter is transferred; or

(3) a third party service provider under contract with an entity described by Subdivision (1) or (2) ~~[commission shall maintain a turnpike project it accepts free of tolls. The authority shall deliver to the commission at the time of acceptance any money remaining to the credit of the project after retirement of the bonds issued for the project. The commission shall deposit the money in a fund to be used to maintain the project facilities. The commission shall administer the fund in accordance with commission rules.~~

~~[(d) Not later than the first anniversary of the date the commission accepts a turnpike project, the department shall advertise for public sale each installation on the project other than the road bed and highway sections and shall solicit sealed bids for those installations. The department may reject any or all bids but shall dispose of the properties not later than the second anniversary of the date the commission accepts title to the project].~~

SECTION 7.20. The heading of Subchapter H, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT TO COUNTY,
MUNICIPALITY, REGIONAL TOLLWAY AUTHORITY, OR LOCAL
GOVERNMENT CORPORATION

SECTION 7.21. Sections 361.281, 361.282, and 361.285, Transportation Code, are amended to read as follows:

Sec. 361.281. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies *only* to:

- (1) a county with a population of more than 1.5 million;
- (2) a local government corporation serving a county with a population of more than 1.5 million; ~~or~~
- (3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;
- (4) *a municipality with a population of more than 120,000 that is adjacent to the United Mexican States; or*
- (5) *a regional tollway authority created under Chapter 366.*

Sec. 361.282. **LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT.** (a) The authority may lease, sell, or convey in another manner a turnpike project to a county, *municipality, regional tollway authority,* or a local government corporation created under Chapter 431.

(b) The authority, the commission, and the governor must approve the transfer of the turnpike project as being in the best interests of the state and the *entity receiving the turnpike project* ~~county~~.

Sec. 361.285. **APPROVAL OF AGREEMENT BY ATTORNEY GENERAL.** (a) An agreement for the lease, sale, or conveyance of a turnpike project under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the county, *municipality, regional tollway authority,* or local government corporation.

(b) If the attorney general determines that the agreement is in accordance with law, the attorney general shall approve the agreement and deliver to the commission a copy of the legal opinion of the attorney general stating that approval.

SECTION 7.22. Subsection (a), Section 361.331, Transportation Code, is amended to read as follows:

(a) The authority may designate two or more turnpike projects that are wholly or partly located in a *metropolitan planning organization* ~~planning region of a council of governments~~ as a pooled turnpike project after:

- (1) conducting a public hearing *in each affected county; and*
- (2) obtaining the approval of the commission~~—and~~
- ~~(3) obtaining a resolution adopted by the commissioners court of the county that:~~
 - ~~[(A) approves the action; and~~
 - ~~[(B) specifies the date the pooled project becomes toll free].~~

SECTION 7.23. Section 362.0041, Transportation Code, is amended to read as follows:

Sec. 362.0041. **CONVERSION [ACQUISITION] OF PROJECTS.** (a) If the commission finds that the conversion of a segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary expansion improvements, or extensions to the state highway system, that segment may~~—on approval of the governor,~~ be converted ~~[transferred]~~ by order of the commission to ~~[the authority. The authority may receive such segment of highway, thereafter to be owned, operated, and maintained as]~~ a turnpike project under Chapter 361.

(b) ~~[The authority shall reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the highway, including all costs associated with the preliminary engineering and design engineer—~~

~~ing for plans, specifications, and estimates, the acquisition of necessary right-of-way, and actual construction of the highway and all necessary appurtenant facilities.~~

~~[(e)] The commission shall, coincident with the transfer, remove the segment of highway from the designated state highway system and shall subsequently have no liability, responsibility, or duty for the maintenance or operation of the highway.~~

[(d)] Prior to *converting* [transferring] a segment of the state highway system under this section, the commission shall conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. Notice of the hearing shall be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved highway is located.

(c) [(e)] The commission shall adopt rules implementing this section, such rules to include criteria and guidelines for the approval of a *conversion* [transfer] of a highway.

SECTION 7.24. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 366 to read as follows:

CHAPTER 366. REGIONAL TOLLWAY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. *SHORT TITLE.* This chapter may be cited as the *Regional Tollway Authority Act*.

Sec. 366.002. *PURPOSES; LIBERAL CONSTRUCTION.* (a) The purposes of this chapter are:

- (1) the expansion and improvement of transportation facilities and systems in this state;
 - (2) the creation of regional tollway authorities to secure and acquire rights-of-way for urgently needed transportation systems and to plan, design, construct, operate, expand, extend, and modify these systems; and
 - (3) the reduction of burdens and demands on the limited money available to the commission and an increase in the effectiveness and efficiency of the commission.
- (b) This chapter shall be liberally construed to effect its purposes.

Sec. 366.003. *DEFINITIONS.* In this chapter:

- (1) "Authority" means a regional tollway authority organized under this chapter.
- (2) "Board" means the board of directors of an authority organized under this chapter.
- (3) "Bond" means all bonds, certificates, notes, and other obligations of an authority authorized by this chapter, any other statute, or the Texas Constitution.
- (4) "Bond proceedings" means a bond resolution and any bond indenture authorized by the bond resolution, any credit agreement entered into in connection with the bonds or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of bonds.
- (5) "Bond resolution" means an order or resolution of an authority's board authorizing the issuance of bonds.
- (6) "Bondholder" means the owner of bonds and includes a trustee acting on behalf of an owner of bonds under the terms of a bond indenture.
- (7) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of the state.
- (8) "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, or a nonprofit corporation, including a transportation corporation created under Chapter 491.

(9) "Revenue" means the tolls, rents, and other money received by an authority from the ownership or operation of a turnpike project.

(10) "System" means a turnpike project or any combination of turnpike projects designated as a system by the board under Section 366.034.

(11) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

- (A) an improvement to relieve traffic congestion and promote safety;
- (B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;
- (C) an administration, storage, or other building the authority considers necessary to operate the turnpike project;
- (D) a parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and
- (E) property rights, easements, and interests the authority acquires to construct or operate the turnpike project.

Sec. 366.004. **CONSTRUCTION COSTS DEFINED.** (a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system under this chapter includes the cost of:

- (1) the actual acquisition, construction, improvement, extension, or expansion of the turnpike project or system;
- (2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;
- (3) machinery and equipment;
- (4) interest payable before, during, and after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;
- (5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the construction, improvement, extension, or expansion;
- (6) necessary or incidental administrative, legal, and other expenses;
- (7) compliance with laws, regulations, and administrative rulings;
- (8) financing; and
- (9) expenses related to the initial operation of the turnpike project or system.

(b) Costs attributable to a turnpike project or system and incurred before the issuance of bonds to finance the turnpike project or system may be reimbursed from the proceeds of sale of the bonds.

[Sections 366.005–366.030 reserved for expansion]

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL TOLLWAY AUTHORITIES

Sec. 366.031. **CREATION AND EXPANSION OF A REGIONAL TOLLWAY AUTHORITY.** (a) Two or more counties, acting through their respective commissioners courts, may by order passed by each commissioners court create a regional tollway authority under this chapter if:

- (1) one of the counties has a population of not less than 300,000;
- (2) the counties form a contiguous territory; and
- (3) unless one of the counties has a population of 1.5 million or more, the commission approves the creation.

(b) *The commission shall adopt rules to implement the provisions of this section by March 1, 1998.*

(c) *A commissioners court may by resolution petition an established authority for inclusion in the authority if the county is contiguous to a county that initially created the authority.*

(d) *On approval of the board of an authority receiving a petition under Subsection (c), the county becomes part of the authority.*

Sec. 366.032. NATURE OF REGIONAL TOLLWAY AUTHORITY. (a) *An authority created under this chapter is a body politic and corporate and a political subdivision of this state.*

(b) *An authority is a governmental unit as that term is defined in Chapter 101, Civil Practice and Remedies Code.*

(c) *The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a turnpike project or system is:*

(1) *in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health, living conditions, and public safety; and*

(2) *an essential governmental function of the state.*

(d) *The operations of an authority are governmental, not proprietary, functions.*

Sec. 366.033. GENERAL POWERS. (a) *An authority, acting through its board, without state approval, supervision, or regulation, may:*

(1) *adopt rules for the regulation of its affairs and the conduct of its business;*

(2) *adopt an official seal;*

(3) *study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects, individually or as one or more systems;*

(4) *acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;*

(5) *enter into contracts or operating agreements with similar authorities or agencies of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;*

(6) *enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;*

(7) *cooperate and work directly with property owners and governmental agencies and officials to support an activity required to promote or develop a turnpike project or system;*

(8) *employ and set the compensation and benefits of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and such other persons as the authority considers necessary or useful;*

(9) *receive loans, gifts, grants, and other contributions for the construction of a turnpike project or system and receive contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, any subdivision of the state, or any other local governmental or private entity, to be used for the purposes for which the grants or contributions are made, and enter into any agreement necessary for the grants or contributions;*

(10) *install, construct, maintain, repair, renew, relocate, and remove public utility facilities in, on, along, over, or under a turnpike project;*

(11) *organize a corporation under Chapter 431 for the promotion and development of turnpike projects and systems;*

(12) *adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project or system, including traffic and other public safety rules;*

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with public or private parties governing the parties' use of all or any portion of a turnpike project and the rights and obligations of the authority with respect to a turnpike project; and

(14) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

(b) Rules adopted by the authority must comply with the procedures in Subchapter B, Chapter 2001, Government Code, and are subject to Section 2001.038, Government Code, except that the action may be brought only in a district court of a county located in the authority.

(c) Property comprising a part of a turnpike project or a system is not subject to condemnation or the power of eminent domain by any person, including a governmental entity.

(d) An authority may, if requested by the commission, perform any function not specified by this chapter to promote or develop turnpike projects and systems in this state.

(e) An authority may sue and be sued and plead and be impleaded in its own name.

(f) An authority may rent, lease, franchise, license, or otherwise make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a turnpike project or system.

(g) An authority and any local governmental entity may enter into a contract under which the authority will operate a turnpike project or system on behalf of the local governmental entity. An authority may enter into a contract with the department under which the authority will operate a turnpike project or system on behalf of the department.

(h) The payments to be made to an authority under a contract described by Subsection (g) shall constitute operating expenses of the facility or system that is to be operated under the contract, and the contract may extend for a number of years as the parties agree.

(i) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of controlled substances or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(j) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

Sec. 366.034. **ESTABLISHMENT OF TURNPIKE SYSTEMS.** (a) If an authority determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more turnpike projects as one operational and financial enterprise, it may create a system comprised of those turnpike projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional turnpike projects as additions to and expansions of a system if the authority determines that the turnpike project could most efficiently and economically be acquired and constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a turnpike project that is not a part of the system or with the revenue of another system.

Sec. 366.035. **CONVERSION OF STATE HIGHWAY SYSTEM PROJECTS.** (a) If the commission determines that the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to the state highway system is the conversion to a turnpike project of a segment of the free state highway system, any segment located in a county of an authority or a county in which an authority operates a turnpike project or in any county adjacent to those counties may, on approval of the governor and the affected

authority, be transferred by order of the commission to that authority. An authority that receives the segment of highway may own, operate, and maintain the segment as a turnpike project or system or a part of a turnpike project or system under this chapter.

(b) An authority shall reimburse the commission for the cost of a transferred highway, unless the commission determines that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost includes the total amount expended by the department for the original construction of the highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the highway and all necessary appurtenant facilities. Costs anticipated to be expended to expand, improve, or extend the highway shall be deducted from the costs to be reimbursed to the commission.

(c) The commission shall, at the time of a transfer, remove the segment of highway from the state highway system. After a transfer the commission has no liability, responsibility, or duty for the maintenance or operation of the highway.

(d) Before transferring a segment of the state highway system under this section, the commission shall conduct a public hearing to receive comments from interested persons concerning the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the segment is located, and a newspaper, if any, published in the counties of the applicable authority.

(e) The commission shall adopt rules implementing this section. The rules shall include criteria and guidelines for the approval of a transfer of a highway.

(f) An authority shall adopt rules providing criteria and guidelines for approving the acceptance of a highway under this section.

[Sections 366.036–366.070 reserved for expansion]

SUBCHAPTER C. FEASIBILITY OF REGIONAL TURNPIKE PROJECTS

Sec. 366.071. **EXPENDITURES FOR FEASIBILITY STUDIES.** (a) An authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed turnpike project or system by:

- (1) using legally available revenue derived from an existing turnpike project or system;
- (2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing turnpike project or system; or
- (3) pledging to the payment of the bonds or loan agreements legally available revenue anticipated to be derived from the operation of an existing turnpike project or system or revenue legally available to the authority from another source.

(b) Money spent under this section for a proposed turnpike project or system must be reimbursed to the turnpike project or system from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed turnpike project or system.

(c) The use of any money of a turnpike project or system to study the feasibility of another turnpike project or system or used to repay any money used for that purpose does not constitute an operating expense of the turnpike project or system producing the revenue and may only be paid from the surplus money of the turnpike project or system.

Sec. 366.072. **FEASIBILITY STUDY FUND.** (a) An authority may maintain a feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for any turnpike project or system.

(b) An authority may transfer an amount from a surplus fund established for a turnpike project or system to the authority's feasibility study fund if the remainder of the surplus fund is not less than any minimum amount required by the bond proceedings to be retained for that turnpike project or system.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system;

(2) the financing of the improvement, extension, or expansion of an existing turnpike project or system; and

(3) private participation, as authorized by law, in the financing of a proposed turnpike project or system, the refinancing of an existing turnpike project or system, or the improvement, extension, or expansion of a turnpike project or system.

(d) Money spent under Subsection (c) for a proposed turnpike project or system must be reimbursed from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the turnpike project or system.

(e) For a purpose described by Subsection (c), an authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Sec. 366.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER LOCAL GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or local governmental entities, a combination of municipalities, counties, and local governmental entities, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system by an authority;

(2) the improvement, extension, or expansion of an authority's existing turnpike project or system; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a turnpike project or system by an authority.

(b) Money spent under Subsection (a) for an authority's proposed turnpike project or system is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from turnpike revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, or operation of the turnpike project or system.

[Sections 366.074–366.110 reserved for expansion]

SUBCHAPTER D. TURNPIKE FINANCING

Sec. 366.111. TURNPIKE REVENUE BONDS. (a) An authority, by adoption of a bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a turnpike project or system, to refund any bonds previously issued for the turnpike project or system, or to pay for all or part of the cost of a turnpike project or system that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates and beginning on the dates, as authorized by law, or bear no interest;

(3) mature at the time or times, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the authority provides in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay the costs of a turnpike project or system. Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the turnpike project or system. In addition, an authority may issue bonds for a turnpike project or system secured by a lien on the revenue of the turnpike project or system subordinate to the lien on the revenue securing other bonds issued for the turnpike project or system.

(f) If the proceeds of a bond issue exceed the cost of the turnpike project or system for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Sec. 366.112. *INTERIM BONDS.* (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to the requirements, restrictions, or procedural provisions contained in any other law.

(c) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 366.113. *PAYMENT OF BONDS; STATE AND COUNTY CREDIT NOT PLEDGED.* (a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the turnpike project or system for which the bonds are issued, including tolls pledged to pay the bonds;

(2) payments made under an agreement with the commission or a local governmental entity as provided by Subchapter G;

(3) money derived from any other source available to the authority, other than money derived from a turnpike project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a turnpike project or system has been pledged for that purpose; and

(4) amounts received under a credit agreement relating to the turnpike project or system for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of the state or any of the counties of an authority or a pledge of the faith and credit of the state or any of the counties. Each bond must contain on its face a statement to the effect that the state, the authority, and the counties of the authority are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit and taxing power of the state or the counties of the authority are pledged to the payment of the principal of or interest on the bond.

(c) An authority may not incur financial obligations that cannot be paid from revenue derived from owning or operating the authority's turnpike projects and systems or from other revenue provided by law.

Sec. 366.114. *EFFECT OF LIEN.* (a) A lien on or a pledge of revenue from a turnpike project or system under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to an item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having any claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

(b) A bond resolution is not required to be recorded except in the regular records of the authority.

Sec. 366.115. BOND INDENTURE. (a) Bonds issued under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the tolls and other revenue to be received but may not convey or mortgage any part of a turnpike project or system.

(c) A bond indenture may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:

(i) the acquisition of property;

(ii) the construction, maintenance, operation, and repair of and insurance for a turnpike project or system; and

(iii) custody, safeguarding, and application of money;

(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of an authority's duty.

(d) The expenses incurred in carrying out a trust agreement may be treated as part of the cost of operating the turnpike project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

(1) require the authority and the board to impose and collect tolls, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the turnpike project or system.

Sec. 366.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) An authority shall submit to the attorney general for examination a transcript of proceedings relating to bonds authorized under this chapter. The transcript shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Sec. 366.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

(b) Bonds of an authority may secure the deposit of public money of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

Sec. 366.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by local governmental entities, including Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

[Sections 366.119–366.160 reserved for expansion]

SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF TURNPIKE PROJECTS

Sec. 366.161. TURNPIKE PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may acquire, construct, operate, maintain, expand, or extend a turnpike project in:

- (1) a county that is a part of the authority; or
- (2) a county in which the authority operates or is constructing a turnpike project if the turnpike project in the affected county is a continuation of the authority's turnpike project or system extending from an adjacent county.

Sec. 366.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a turnpike project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other local governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Sec. 366.163. ACQUISITION OF PROPERTY. (a) An authority may acquire in the name of the authority public or private real and other property it determines necessary or convenient for the construction, operation, maintenance, expansion, or extension of a turnpike project or for otherwise carrying out this chapter.

(b) The property an authority may acquire under this subchapter includes all or any portion of, and rights in and to:

- (1) public or private land, streets, alleys, rights-of-way, parks, playgrounds, and reservations;
- (2) franchises;
- (3) easements;
- (4) licenses; and
- (5) other interests in real and other property.

(c) An authority may acquire real property by any method, including purchase and condemnation. An authority may purchase public or private real property on the terms and at the price the authority and the property owner consider reasonable.

(d) Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the authority are not binding against the authority and do not impair the authority's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to

enjoin the authority from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek compensation for damages to the person's property under Section 17, Article I, Texas Constitution.

(e) Subsection (d) does not affect the obligation of the authority under other state law to compensate the state for acquiring or using property owned by or on behalf of the state.

Sec. 366.164. RIGHT OF ENTRY. (a) To acquire property necessary or useful in connection with a turnpike project, an authority may enter any real property, water, or premises to make a survey, geotechnical evaluation, sounding, or examination.

(b) An entry under Subsection (a) is not:

- (1) a trespass; or
- (2) an entry under a pending condemnation proceeding.

(c) The authority shall make reimbursements for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

Sec. 366.165. CONDEMNATION OF REAL PROPERTY. (a) Subject to Subsection (c), an authority may acquire public or private real property in the name of the authority by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

- (1) the authority and the property owner cannot agree on a reasonable price for the property; or
- (2) the property owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) An authority may condemn real property that the authority determines is:

- (1) necessary or appropriate to construct or to efficiently operate a turnpike project;
- (2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;
- (3) necessary for access, approach, and interchange roads;
- (4) necessary to provide proper drainage and ground slope for a turnpike project; or
- (5) necessary otherwise to implement this chapter.

(c) An authority may construct a supplemental facility only on real property the authority purchases.

(d) An authority's acquisition of any real or other property of the commission under this section or any other section of this chapter or an authority's relocation, rerouting, disruption, or alteration of any facility of the commission is considered a conversion of a state highway under Section 366.035 and is subject to all requirements and approvals of a conversion under that section.

Sec. 366.166. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

- (1) in which the authority files a condemnation petition under Chapter 21, Property Code; or
- (2) to which the case is assigned.

(b) An authority may file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) The declaration of taking must include:

- (1) a specific reference to the legislative authority for the condemnation;
- (2) a description and plot plan of the real property to be condemned, including the following information if applicable:
 - (A) the municipality in which the property is located;
 - (B) the street address of the property; and
 - (C) the lot and block number of the property;

- (3) a statement of the property interest to be condemned;
 - (4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and
 - (5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.
- (d) A deposit to the registry of the court of an amount equal to the appraised fair market value, as determined by the authority, of the property to be condemned and any damages to the remainder must accompany the declaration of taking.
- (e) Instead of the deposit under Subsection (d), at its option, the authority may, concurrently with the declaration of a taking, tender in favor of the owner of the subject property a bond or other security in an amount sufficient to secure the owner for the value of the property taken and damages to remaining property, if the authority obtains the court's approval.
- (f) The date on which the declaration is filed is the date of taking for the purpose of assessing the value of the property taken and damages to any remaining property to which an owner is entitled.
- (g) An owner may draw upon the deposit held by the court under Subsection (d) on the same terms and conditions as are applicable under state law to a property owner's withdrawal of a commissioners' award deposited under Section 21.021(a)(1), Property Code.
- (h) A property owner that is a defendant in an eminent domain action filed by an authority under this chapter has 20 days after the date of service of process of both a condemnation petition and a notice of declaration of taking to give notice to the court in which the action is pending of the defendant's desire to have the condemnation petition placed on the court's docket in the same manner as other cases pending in the court. On receipt of timely notice from the defendant, the court in which the eminent domain action is pending shall place the case on its docket in the same manner as other cases pending in the court.

Sec. 366.167. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, an authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property on the same terms as if a commissioners hearing had been conducted, pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, an authority may not take possession before the 31st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Sec. 366.168. SEVERANCE OF REAL PROPERTY. (a) If an authority's turnpike project severs a property owner's real property, the authority shall pay:

- (1) the value of the property acquired; and
 - (2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.
- (b) At its option, an authority may negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by an authority.

Sec. 366.169. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by the state or a local governmental entity that the authority considers necessary for the construction or operation of a turnpike project.

(b) The state or a local governmental entity having charge of public real property may consent to the use of the property for a turnpike project.

(c) Except as provided by Section 366.035, the state or a local governmental entity may convey, grant, or lease to an authority real property, including highways and other real property already devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish the authority's purposes, including the construction or operation of a turnpike project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of the state or local governmental entity necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute leases for the development of oil, gas, and other minerals on state-owned real property adjoining a turnpike project or in tidewater limits. The leases may provide for directional drilling from the adjoining property or tidewater area.

(e) This section does not affect the obligation of the authority under other state law to compensate the state for acquiring or using property owned by or on behalf of the state. An authority's use of property owned by or on behalf of the state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 366.170. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY.

(a) Except as provided by Section 366.035 or Section 366.165(c), an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

- (1) parks and playgrounds;
- (2) property owned by or on behalf of the state that under state law requires compensation to the state for the use or acquisition of the property; or
- (3) as provided by this chapter.

(b) Public property damaged in the exercise of powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local governmental entity that are necessary or convenient to construct, acquire, or efficiently operate a turnpike project or system under this chapter. This subsection does not affect the obligation of the authority under other state law to compensate the state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of the state. An authority's use of property owned by or on behalf of the state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 366.171. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the installation, construction, operation, maintenance, repair, renewal, relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If an authority determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the turnpike project, removed from the turnpike project, or carried along or across the turnpike project by grade separation, the owner or operator of the utility facility shall relocate or remove the facility in accordance with the requirements of the authority and in a manner that does not impede the design, financing, construction, operation, or maintenance of the turnpike project. The authority, as a part of the cost of the turnpike project or the cost of operating the turnpike project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

- (1) installation of the facility in a new location;
- (2) damages incurred by the utility to its facilities and services;
- (3) interests in real property and other rights acquired to accomplish the relocation or removal; and
- (4) maintenance of grade separation structures.

(c) The authority may reduce the total costs to be paid by the authority under Subsection (b) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified by the authority. If an owner or operator of a public utility facility does not timely remove or relocate as required under Subsection (b), the authority may do so at the expense of the public utility. If the authority determines that a delay in

relocation is the result of circumstances beyond the control of the utility, full costs shall be paid by the authority.

(d) Chapter 228, Acts of the 51st Legislature, Regular Session, 1949 (Article 1436a, Vernon's Texas Civil Statutes), applies to the erection, construction, maintenance, and operation of lines and poles owned by a corporation described by Section 1 of that Act over, under, across, on, and along a turnpike project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that Act, and an authority has exclusive jurisdiction and control of utilities located in its rights-of-way.

(e) Chapter 470, Acts of the 52nd Legislature, 1951 (Article 1436b, Vernon's Texas Civil Statutes), applies to the laying and maintenance of facilities used for conducting gas by a person, firm, or corporation or municipality described in Section 1 of that Act through, under, along, across, and over a turnpike project or system constructed by an authority except as otherwise provided by this section. An authority has the power and duties delegated to the commissioners court by that Act and an authority has exclusive jurisdiction and control of utilities located in its right-of-way.

(f) The laws of this state applicable to the use of public roads, streets, and waters by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project or system constructed by an authority under this chapter.

(g) In this section "public utility facility" means a track, pipe, main, conduit, cable, wire, tower, pole, or other item of plant or equipment or an appliance of a public utility or other person.

Sec. 366.172. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) An authority may lease, sell, or convey in another manner a turnpike project to the department, a county, or a local government corporation created under Chapter 431 only with the approval of the governing body of the entity to which the project is transferred.

(b) An agreement to lease, sell, or convey a turnpike project under this section must provide for the discharge and final payment or redemption of the authority's outstanding bonded indebtedness for the turnpike project and must not be prohibited under the bond proceedings applicable to the system, if any, of which the turnpike project is a part.

Sec. 366.173. REVENUE. (a) An authority may:

(1) impose tolls for the use of each of its turnpike projects and systems and the different parts or sections of each of its turnpike projects and systems; and

(2) contract with a person for the use of part of a turnpike project or system or lease or sell part of a turnpike project or system, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility, telecommunication line or facility, data transmission line or facility, and electric line or facility, under terms set by the authority.

(b) Tolls must be set so that the aggregate of tolls from an authority's turnpike project or system, together with other revenue of the turnpike project or system:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the turnpike project or system; and

(B) the principal of and interest on the bonds issued for the turnpike project or system as those bonds become due and payable; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Tolls are not subject to supervision or regulation by any state agency or other local governmental entity.

(d) Tolls and other revenue derived from a turnpike project or system for which bonds are issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the bond proceedings, shall be set

aside at regular intervals as may be provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of:

- (1) interest on the bonds as it becomes due;
 - (2) principal of the bonds as it becomes due;
 - (3) necessary charges of paying agents for paying principal and interest; and
 - (4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bond proceedings.
- (e) Use and disposition of money to the credit of the sinking fund is subject to the bond proceedings.
- (f) To the extent permitted under the applicable bond proceedings, revenue from one turnpike project of an authority may be used to pay the cost of other turnpike projects of the authority.

(g) An authority may not use revenue from its turnpike projects in a manner not authorized by this chapter. Revenue generated from a turnpike project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a turnpike project.

Sec. 366.174. **AUTHORITY REVOLVING FUND.** (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

- (1) money from a turnpike project if the transfer does not diminish the money available for the project or the system, if any, of which it is a part to less than an amount required to be retained by the bond proceedings pertaining to the project or system;
- (2) money received by the authority from any source and not otherwise committed, including money from the transfer of a turnpike project or system or sale of authority assets;
- (3) advances authorized under Section 52-b, Article III, Texas Constitution; and
- (4) contributions, loans, grants, or assistance from the United States, another state, a political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local governmental entity, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

- (1) finance the acquisition, construction, maintenance, or operation of a turnpike project or system, including the extension, expansion, or improvement of a project or system;
- (2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;
- (3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a turnpike project or system;
- (4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a turnpike project or system;
- (5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and
- (6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a turnpike project or system must be reimbursed from the money of that turnpike project or system, and there must be a reasonable expectation of such repayment at the time of authorization.

Sec. 366.175. USE OF SURPLUS REVENUE. *The board of an authority may by resolution authorize the use of surplus revenue of a turnpike project or system to pay the costs of another turnpike project or system other than a project financed under Subchapter G. The board may in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the surplus revenue.*

Sec. 366.176. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) *An authority is exempt from taxation of or assessments on:*

- (1) *a turnpike project or system;*
- (2) *property the authority acquires or uses under this chapter; or*
- (3) *income from property described by Subdivision (1) or (2).*

(b) *An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by a county, municipality, road and utility district, river authority, any other state or local governmental entity, or any property owners' or homeowners' association.*

Sec. 366.177. ACTIONS AFFECTING EXISTING ROADS. (a) *An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.*

(b) *An authority may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the turnpike project.*

(c) *If feasible, an authority shall provide access to properties previously abutting a county or other public road that is taken for a turnpike project and shall pay abutting property owners the expenses or any resulting damages for a denial of access to the road.*

Sec. 366.178. FAILURE OR REFUSAL TO PAY TOLL. (a) *A motor vehicle other than a police or emergency vehicle that passes through a toll collection facility, whether driven or towed, shall pay the proper toll.*

(b) *A person who fails or refuses to pay a toll provided for the use of a project is liable for a fine not to exceed \$250, plus an administrative fee incurred in connection with the violation.*

(c) *If a person fails to pay the proper toll:*

(1) *on issuance of a notice of nonpayment, the registered owner of the nonpaying vehicle shall pay both the proper toll and the administrative fee; and*

(2) *an authority may charge an administrative fee of not more than \$100 to recover the cost of collecting the unpaid toll.*

(d) *Notice of nonpayment under Subsection (c)(1) shall be sent by first-class mail and may not require payment of the proper toll and the administrative fee before the 30th day after the date the notice is mailed. The registered owner shall pay a separate toll and administrative fee for each nonpayment.*

(e) *If the registered owner of the vehicle fails to pay the proper toll and administrative fee in the time specified by the notice, the owner shall be cited as for other traffic violations as provided by law, and the owner shall pay a fine of not more than \$250 for each nonpayment.*

(f) *In the prosecution of a violation for nonpayment, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence.*

(g) The court of the local jurisdiction in which the violation occurs may assess and collect the fine in addition to any court costs. The court shall collect the proper toll and administrative fee and forward the toll and fee to the authority.

(h) It is a defense to nonpayment under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

- (1) the occurrence of the failure to pay; or
- (2) eight hours after the discovery of the theft.

(i) A registered owner who is the lessor of a vehicle for which a notice of nonpayment has been issued is not liable if, not later than the 30th day after the date the notice of nonpayment is mailed, the registered owner provides to the authority a copy of the lease agreement covering the vehicle on the date of the nonpayment. The name and address of the lessee must be clearly legible. If the lessor timely provides the required information, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this section. The lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

Sec. 366.179. **USE AND RETURN OF TRANSPONDERS.** (a) For purposes of this section, a transponder is a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 366.182(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

- (1) the authority;
- (2) an entity to which a project authorized by this chapter is transferred; or
- (3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

Sec. 366.180. **CONTROLLED ACCESS TO TURNPIKE PROJECTS.** (a) An authority may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

- (1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, other vehicle, or a pedestrian;
- (2) deny access to or from:
 - (A) its turnpike projects;
 - (B) real property adjacent to its turnpike projects; or
 - (C) a street, road, alley, highway, or other public or private way intersecting its turnpike projects;
- (3) designate locations on its turnpike projects at which access to or from the toll road is permitted;
- (4) control, restrict, and determine the type and extent of access permitted at a designated location of access to the turnpike projects; or
- (5) erect appropriate protective devices to preserve the utility, integrity, and use of its turnpike projects.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Sec. 366.181. PROMOTION OF TOLL ROADS. An authority may promote the use of its turnpike projects by appropriate means, including advertising or marketing as the authority determines appropriate.

Sec. 366.182. OPERATION OF TURNPIKE PROJECT. (a) An authority shall operate its turnpike projects through a force of toll-takers and other employees of the authority or through services contracted under Subsection (b) or (c).

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend the authority's turnpike projects.

(c) An authority may contract with any state or local governmental entity for the services of peace officers of that agency.

Sec. 366.183. AUDIT. An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project.

Sec. 366.184. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law.

Sec. 366.185. COMPETITIVE BIDDING. (a) A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

(b) The authority shall adopt rules governing the award of contracts through competitive bidding.

[Sections 366.186–366.250 reserved for expansion]

SUBCHAPTER F. GOVERNANCE

Sec. 366.251. BOARD OF DIRECTORS. (a) An authority is governed by a board of directors.

(b) The commissioners court of each county of the authority shall appoint one director to serve on the board. The governor shall appoint three directors to serve on the board.

(c) Directors shall be divided into two groups. To the greatest degree possible, each group shall contain an equal number of directors. Directors shall serve terms of two years, except that one group of directors of the initial board of an authority shall serve for a term of one year.

(d) Two directors appointed by the governor must have resided in a county of the authority for at least one year before the person's appointment. One director appointed by the governor must have resided in a county adjacent to a county of the authority for at least one year before the person's appointment. Each director appointed by a commissioners court must have resided in that county for at least one year before the person's appointment.

(e) All appointments to the board shall be made without regard to disability, sex, religion, age, or national origin. In making appointments under this section, the governor shall attempt to create a board that is representative of the diversity of the authority.

(f) An elected official is not eligible to serve as a director.

(g) A vacancy in a position shall be filled promptly by the entity that made the appointment.

(h) Each director has equal status and may vote.

(i) The board of an authority shall select one director as the presiding officer of the board to serve in that capacity until the person's term as a director expires. The board shall elect one director as assistant presiding officer. The board shall select a secretary and treasurer, neither of whom need be a director.

(j) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

Sec. 366.252. **CONFLICT OF INTEREST.** (a) A person is not eligible to serve on the board of an authority if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the authority or receiving money from the authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the authority, other than compensation for acquisition of turnpike right-of-way;

(4) uses or receives a substantial amount of tangible goods, services, or money from the authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses, or for compensation for acquisition of turnpike right-of-way;

(5) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation; or

(6) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(b) A person may not act as the general counsel to an authority if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(c) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Sec. 366.253. **SURETY BONDS.** (a) Before beginning a term, each director shall execute a surety bond in the amount of \$25,000, and the secretary and treasurer shall execute a surety bond in the amount of \$50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Sec. 366.254. **REMOVAL OF DIRECTOR.** (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 366.251(d);

(2) whether at the time of appointment or at any time during the director's term, is ineligible under Section 366.251(f) or 366.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c) If the administrative head of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Sec. 366.255. **COMPENSATION OF DIRECTOR.** Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Sec. 366.256. **EVIDENCE OF AUTHORITY ACTIONS.** Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Sec. 366.257. **PUBLIC ACCESS.** An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Sec. 366.258. **INDEMNIFICATION.** (a) An authority may indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) If an authority does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) This section applies to a current or former director or officer of the authority.

Sec. 366.259. **PURCHASE OF LIABILITY INSURANCE.** (a) An authority shall insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's turnpike projects.

(b) Insurance coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance.

(c) This section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, and other power equipment.

Sec. 366.260. **CERTAIN CONTRACTS AND SALES PROHIBITED.** (a) A director, agent, or employee of an authority may not:

(1) contract with the authority; or

(2) be directly or indirectly interested in:

(A) a contract with the authority; or

(B) the sale of property to the authority.

(b) A person who violates Subsection (a) is liable for a civil penalty to the authority not to exceed \$1,000.

Sec. 366.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties composing the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an authority shall issue a plan covering the next five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all turnpike revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent strategic plan. At the invitation of a commissioners court of a county in the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Sec. 366.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

[Sections 366.263–366.300 reserved for expansion]

SUBCHAPTER G. AID FOR REGIONAL TURNPIKE PROJECTS

Sec. 366.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) To the extent permitted by the Texas Constitution, the department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. Money from the state highway fund spent under this section must be repaid from tolls or other revenue of the turnpike project or system on which the money from the state highway fund was expended.

(d) The commission or department may use federal money for any purpose described by this chapter.

Sec. 366.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TURNPIKE PROJECTS. (a) An authority may enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the

United Mexican States, a state of the United Mexican States, a local governmental entity, or another political subdivision, to permit the entity, jointly with the authority, to study the feasibility of a turnpike project or system or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project or system.

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

- (1) the design, financing, construction, maintenance, and operation of a turnpike project or system in accordance with standards adopted by the authority; and*
- (2) professional and consulting services to be rendered under standards adopted by the authority in connection with a turnpike project or system.*

(c) An authority may not incur a financial obligation on behalf of, or otherwise guarantee the obligations of, a private entity that constructs, maintains, or operates a turnpike project or system.

(d) An authority or a county in an authority is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of a turnpike project or system.

(e) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. *(a) A local governmental entity other than a nonprofit corporation may, consistent with the Texas Constitution, issue bonds or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a turnpike project or system. The entity may levy and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.*

(b) In addition to the powers provided by Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with an authority to issue bonds or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a turnpike project or system of that authority.

(c) To make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the contract, a local governmental entity may:

- (1) pledge revenue from any available source, including annual appropriations;*
- (2) levy and collect taxes; or*
- (3) provide for a combination of Subdivisions (1) and (2).*

(d) The term of an agreement under this section may not exceed 40 years.

(e) Any election required to permit action under this subchapter must be held in conformity with Chapter 1, Title 22, Revised Statutes, or other law applicable to the local governmental entity.

Sec. 366.304. ADDITIONAL AGREEMENTS OF AUTHORITY. *An authority may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.*

SECTION 7.25. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: REGIONAL TOLLWAY AUTHORITIES. *(a) A regional tollway authority governed by Chapter 366, Transportation Code, is entitled to obtain from the department criminal history record information maintained by the department that pertains to a person who is:*

- (1) employed by the regional tollway authority; or*
- (2) an applicant for employment with the regional tollway authority.*

(b) Criminal history record information obtained under Subsection (a) may not be released or disclosed to any person except in a criminal proceeding, in a hearing conducted by the regional tollway authority, on court order, or with the consent of the person who is the subject of the criminal history record information.

SECTION 7.26. (a) Notwithstanding Section 366.031, Transportation Code, as added by this Act, the North Texas Tollway Authority is established as a regional tollway authority under Chapter 366, Transportation Code, as added by this Act.

(b) The North Texas Tollway Authority consists of all territory in Collin, Dallas, Denton, and Tarrant counties. The operations of the authority may extend to other counties as permitted under Section 366.161, Transportation Code, as added by this Act, and the jurisdiction of the authority may be expanded to include other counties under Section 366.031, Transportation Code, as added by this Act. As of the effective date of this Act, Cooke, Ellis, Fannin, Grayson, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties are the only counties that meet the geographical qualifications for future inclusion in the North Texas Tollway Authority.

(c) Notwithstanding Section 366.251, Transportation Code, as added by this Act, the initial board of directors of the North Texas Tollway Authority is composed of nine directors as follows:

(1) three directors appointed by the governor, two of whom must have resided in a county of the authority for at least one year before the person's appointment and one of whom must have resided in Parker County, Ellis County, or Johnson County for at least one year before the person's appointment;

(2) one director appointed by the commissioners court of each county in the authority; and

(3) the county judges of two of the counties of the authority, as agreed by a majority of the county judges of the authority.

(d) The terms of the initial directors of the North Texas Tollway Authority begin on September 1, 1997. The county judges serving as initial directors shall each serve a one-year term. At the expiration of that term, the seats held by the county judges are not refilled, and the number of directors composing the board is reduced to seven but may be increased if additional counties join the authority.

(e) One of the directors of the North Texas Tollway Authority appointed to the initial board by the governor serves a one-year term. Each successor to that director shall be appointed by the governor for a two-year term.

(f) The two directors appointed to the initial board of the North Texas Tollway Authority by the commissioners courts of the counties whose county judges serve as initial directors each serve a one-year term. Each successor to those directors shall be appointed for a two-year term. The remaining initial directors serve two-year terms.

(g) The North Texas Tollway Authority shall, within a reasonable time after the effective date of this Act, perform and adequately fund a feasibility study for the construction of the Trinity Parkway in the southern part of Dallas County.

SECTION 7.27. Subsection (b), Section 365.013, Transportation Code, is amended to read as follows:

(b) A district may not construct a toll structure within two miles of the intersection of the toll road and a federal highway *unless the toll structure is located in a county with a population of more than 2.1 million or a county adjacent to a county with a population of more than 2.1 million.*

SECTION 7.28. If the Texas Department of Transportation is authorized to construct an intermodal toll road inclusive of a freight rail line that is to be part of the state highway system:

(1) in selecting the route for an intermodal toll road, the department must give consideration to the character of the land along the proposed route of the toll road and its suitability for particular uses and the impact on neighborhoods, schools, and projected future residential subdivisions along the proposed route; and

(2) if the route is to be selected from among more than one alternative route, the department must give consideration to the character of the land and the impact on neighborhoods, schools, and projected future residential subdivisions along each alternative route and the suitability of the land for particular uses.

SECTION 7.29. Sections 361.003, 361.038, 361.039, 361.040, 361.041, 361.044, 361.045, 361.047, 361.048, 361.139, 361.190, and 361.284, and Subsection (e), Section 361.331, Transportation Code, are repealed.

ARTICLE 8. TRANSITION, EFFECTIVE DATE, AND EMERGENCY

SECTION 8.01. (a) The Texas Turnpike Authority is abolished and the Texas Turnpike Authority division of the Texas Department of Transportation is created on the effective date of this Act. Except as provided by Subsections (b) and (c) of this section, all assets, rights, and obligations of the Texas Turnpike Authority are transferred to the division.

(b) The North Texas Tollway Authority shall succeed to all assets, rights, and other property of the Texas Turnpike Authority located in Collin, Dallas, Denton, or Tarrant County, including all assets and rights that relate to the Dallas North Tollway, the Addison Airport Toll Tunnel, the President George Bush Turnpike, the Mountain Creek Lake Bridge, all existing and proposed extensions to those projects, the Texas Turnpike Authority administration building, and all other facilities, improvements, leaseholds, funds, accounts, and investments related to a project listed in this subsection.

(c) The North Texas Tollway Authority shall assume and become liable for all duties and obligations of the Texas Turnpike Authority related to the assets, rights, and properties transferred under Subsection (b) of this section, including contracts and bonds secured by the revenues of the assets. The North Texas Tollway Authority is obligated to comply with all the assumed obligations to the same extent as the Texas Turnpike Authority.

(d) An employee of the Texas Turnpike Authority may elect to become an employee of either the Texas Turnpike Authority division of the Texas Department of Transportation or the North Texas Tollway Authority on the effective date of this Act, subject to the employment openings and requirements of those entities.

(e) A rule or regulation adopted by the Texas Turnpike Authority relating to the operation of a turnpike in Collin, Dallas, Denton, or Tarrant County before the effective date of this Act that is not inconsistent with this Act remains in effect as a rule or regulation of the North Texas Tollway Authority until superseded by action of that entity.

SECTION 8.02. (a) As additional consideration for the transfer of the properties described in Subsection (b) of Section 8.01 of this Act, the North Texas Tollway Authority shall pay to the Texas Turnpike Authority division of the Texas Department of Transportation a sum determined as provided by Subsection (c) of this section with payments to be made as follows:

- (1) one-third of the amount not later than December 31, 1997;
- (2) one-third of the amount not later than September 1, 1998; and
- (3) the balance not later than August 31, 1999.

(b) After December 31, 1997, interest accrues on the unpaid portion of amounts owed under Subsection (a) of this section. The applicable rate of interest for each quarter of a fiscal year is the average rate of return that money in the general revenue fund earned in the preceding quarter, as determined by the comptroller of public accounts.

(c) The state auditor's office shall, in consultation with the comptroller, conduct an audit of the records of the Texas Turnpike Authority. The state auditor may contract with a private entity to perform the audit required by this section. The audit must identify all funds in the possession of the Texas Turnpike Authority that belong to the Texas Turnpike Authority division of the Texas Department of Transportation. The audit must be completed not later than December 31, 1997, and the authority shall make any payment required to the department not later than August 31, 1999. The payment is the amount determined by the audit to be in excess of funds required for compliance with all bond resolutions, bond indentures, credit agreements, and all other agreements assumed by the authority and that reserves held by the authority as required under or in connection with the resolutions, indentures, credit agreements, and other agreements are maintained at a level consistent with the Texas Turnpike Authority's historical practices. In determining the payments to be made under this subsection, the state auditor shall ensure that following the payment, the authority is in financial compliance with all bond resolutions, bond indentures, credit agreements, and

all other agreements assumed by the authority and that reserves held by the authority as required under or in connection with the resolutions, indentures, credit agreements, and other agreements are maintained at a level consistent with the Texas Turnpike Authority's historical practices.

(d) Not later than October 1, 1997, as additional consideration for the transfer of the properties described in Subsection (b) of Section 8.01 of this Act, the North Texas Tollway Authority shall distribute the proceeds, as determined by subtracting the deferred study costs from the assets, of the Texas Turnpike Authority feasibility study fund on the effective date of this Act as follows:

(1) all proceeds necessary to pay contract commitments for feasibility studies for Laredo Bridge Number IV, Anzalduas Bridge, Port of Brownsville Bridge, United States Highway 183A, State Highway 45/Loop 1, and State Highway 130, but not less than \$1.845 million, shall be distributed to the department for deposit in the special account created by Subsection (b) of Section 8.06 of this Act;

(2) all proceeds necessary to pay contract commitments for feasibility studies other than those listed in Subdivision (1) of this subsection that were under contract as of the financial statements of the Texas Turnpike Authority on January 31, 1997, shall be distributed to the North Texas Tollway Authority; and

(3) any remaining proceeds shall be distributed to the Texas Department of Transportation for deposit in the special account created by Subsection (b) of Section 8.06 of this Act.

SECTION 8.03. The North Texas Tollway Authority is a successor agency to the Texas Turnpike Authority for all purposes, including for the purpose of Section 52-b, Article III, Texas Constitution, concerning all assets, rights, other property, duties, and obligations transferred to the authority under Subsection (b) of Section 8.01 of this Act. The Texas Department of Transportation is a successor to the Texas Turnpike Authority for all purposes concerning assets, rights, other property, duties, and obligations not transferred to the North Texas Tollway Authority under Subsection (b) of Section 8.01 of this Act. Any existing agreement by and between the Texas Turnpike Authority and the state, the Texas Transportation Commission, the Texas Department of Transportation, the Federal Highway Administration, the United States Department of Transportation, any other federal or state governmental entity, or any local governmental entity that pertains to an asset, right, or obligation transferred to the North Texas Tollway Authority under this Act is binding on, benefits, and is fully enforceable by and against the North Texas Tollway Authority as successor to the Texas Turnpike Authority.

SECTION 8.04. The changes in law made by this Act in the qualifications of members of the Texas Transportation Commission or the Texas Motor Vehicle Commission do not affect the entitlement of a member serving on one of those commissions before September 1, 1997, to continue to carry out the functions of the commission for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the Texas Transportation Commission on September 1, 1997, from being reappointed to that commission if the person has the qualifications required for a member under Chapter 201, Transportation Code, as amended by this Act. This Act does not prohibit a person who is a member of the Texas Motor Vehicle Commission on September 1, 1997, from being reappointed to that commission if the person has the qualifications required for a member under the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 8.05. (a) The governor shall appoint the six directors to the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation for initial terms as follows: two to serve terms expiring February 15, 1999, two to serve terms expiring February 15, 2001, and two to serve terms expiring February 15, 2003.

(b) Until a majority of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation has been appointed and has qualified, the members of the board of directors of the Texas Turnpike Authority serving immediately before the effective date of this section shall exercise the authority granted to the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation. When a majority of the members of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation has been appointed and has qualified and until all

appointees have taken office, a quorum of the board is a majority of the number of directors who have qualified.

SECTION 8.06. (a) The Texas Department of Transportation shall remit to the comptroller of public accounts all money and other funds received by the department as a result of the abolition of the Texas Turnpike Authority and the creation of the Texas Turnpike Authority division of the department, including all funds payable under Section 8.02 of this article and any money received for a feasibility study under Subchapter E, Chapter 361, Transportation Code.

(b) The comptroller of public accounts shall deposit money received from the Texas Department of Transportation under this section to the credit of a special account in the general revenue fund.

(c) Subsection (a) of this section does not apply to money or other funds transferred to the North Texas Tollway Authority.

SECTION 8.07. This Act takes effect September 1, 1997.

SECTION 8.08. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 21, 1997, by a viva-voce vote; May 24, 1997, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1997, House granted request of the Senate; June 1, 1997, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 21, 1997, by a non-record vote; May 26, 1997, House granted request of the Senate for appointment of Conference Committee; June 1, 1997, House adopted Conference Committee Report by a non-record vote.

Approved June 20, 1997.

Effective September 1, 1997.

CHAPTER 1172

S.B. No. 371

AN ACT

relating to the continuation and functions of the Texas Commission on Fire Protection and the transfer of certain commission functions to the state fire marshal and the Texas Department of Insurance.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. OPERATIONS OF THE COMMISSION

SECTION 1.01. Section 419.003, Government Code, is amended to read as follows:

Sec. 419.003. SUNSET PROVISION. The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009 [1997].

SECTION 1.02. Section 419.004, Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The commission is composed of the following 12 members:

(1) *two members to be selected from a list of five names submitted by the Texas Fire Chiefs Association who are [three] chief officers with a minimum rank that is equivalent to the position immediately below that of the fire [of battalion] chief and who are employed in fire departments as defined by Section 419.021 that are under the jurisdiction of the commission, at least one [two] of whom must be the head [heads] of a [their] fire department [departments,] and one of whom must be employed by a political subdivision with a population of less than 50,000 [one must be employed by a political subdivision with*